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In the  
**Supreme Court of the United States**

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MR. STAN J. H. LEE,

*Petitioner,*

v.

2050 S. HAVANA LLC; KOREAN & JAPANESE  
SUPERMARKET LLC Together Known as KO Mart LLCs;  
THE DIANE KATCHEN & BARNEY KATCHEN TRUST,  
*Respondents.*

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On Petition for a Writ of Certiorari  
to the Supreme Court of the State of Colorado

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

### Due Process and Equal Protection of Laws:

(1) Whether the collusive fraudulent conduct of the Petitioner's attorney against the Petitioner, constituted exceptional circumstances and excusable neglect on the part of the Petitioner's legal representative leading to denial of equal protection of laws and due process rights to the Petitioner ?

(2) Whether the racist libelous attacks jointly carried by out by the Petitioner's Attorney Mr. David M. Fried with the Plaintiff's Attorney Mr. Howard J. Beck in case No. 02 CV 384 in open court on 21-21-03 constituted exceptional circumstances and denial of equal protection of laws and due process rights to the Petitioner?

(3) Whether the oral order passed by the Trial Court on 3rd October 2003 purportedly on the basis of the hearing on the specific issue of invalidity of the RTG-TPD due to legal infirmity, but deciding the issue of ownership of shares without affording the Petitioner and RTG-TPD Trust any notice and opportunity to produce evidence on the specific issue of the judgment, against the documentary evidence on record of the court, and against the admissions of the Plaintiffs constituted denial of equal protection of laws and due process rights, rendering the order null and void?

(4) Whether the written order dated 01-09-03 passed by the Trial Court in Case No. 01CV 0222 was null and void having been passed out of jurisdiction after more than 60 days of the filing of the Post Trial Motion of 16th October 2003 in violation of Rule 59 (j) of Colorado Rules of Civil Procedure?

(5) Whether the order of contempt citation and threat to the Petitioner of immediate arrest and indefinite incarceration without bond by the Trial Court for the refusal to sign the proposed "global settlement" interfered with the free, fair, and impartial judicial process and constituted denial of equal protection of laws and due process rights to the Petitioner?

(6) Whether the mistakes committed by the Petitioner's Attorney Mr. David M. Fried in not seeking full discovery in Case No. 02CV 384 constituted "excusable neglect and exceptional circumstances attributable to the Petitioner's legal representative" in terms of *Guevara v. Foxhoven*, 928, P. 2d 793, and denial of equal protection of laws and due process rights of the Petitioner?

(7) Whether the collusive fraud committed by the Petitioner's Attorney Mr. David M. Fried against the Petitioner's and in pursuit of the interests of the Plaintiffs in both cases 01 CV 0222 and 02 CV 384 interfered with free, fair and impartial judicial process and led to denial of equal protection of laws and due process rights to the Petitioner?

**PARTIES TO THE PROCEEDINGS**

**Petitioner**

**Stan J. H. Lee**

**Respondents**

- 1. 2050 S. Havana LLC**
- 2. Korean and Japanese Supermarket LLC  
Together Known as KOMART LLCs**
- 3. The Diane Katchen Trust and Barney Katchen Trust**



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3. Colorado Court of Appeals dated 1st Feb. 2005 in Case No. 05 CA 2675
4. Colorado Court of Appeals dated 12.24.04 in Case No. 04 CA 2077
5. Order of Trial Court dated 12.15.2004 on discovery in Case No. 02 CV 384
6. Order of Trial Court dated 12.15.04 on the issue of Jury Trial in Case No. 02 CV 384
7. Order of Trial Court dated 07.16.04 on Motion under Rule 97 in Case No. 02 CV 384
8. Transcripts of Court Proceedings in Court No. 401, Arapahoe County District Court, dated 06.25.04 in case No. 02 CV 384
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### **BASIS OF JURISDICTION**

1. This petition is filed under Sections 1983 and 1981 of Title 42 against deprivation of property of the Petitioner without due process and by denial of equal protection of laws by the Arapahoe County Courts acting under the color of State Law. The matter was appropriately represented to the Supreme Court of the State of Colorado but the requested permissible relief as per law was denied by its order dated 31st May 2005.
2. This Court has jurisdiction under Sections 1981 and 1983 of Title 42 to review the order of the Supreme Court of Colorado, dated 31st August 2005 denying a writ of certiorari, copy of the order of the Supreme Court of Colorado is annexed as Apx. O.
3. This Petition has been filed within 90 days of the order of the Supreme Court of the State of Colorado dated 31st May 2005.
4. The petition for a writ of certiorari before the Supreme Court of the State of Colorado was timely filed against the



order of the Court of Appeals in Appeal Case No. 04 CA 2675 dated 1st February 2005. Apx. N.

5. The Appeal in the Court of Appeals, State of Colorado, was filed against two orders of the Trial Court dated 12.15.04, copies annexed as Apx. M-1 and Apx. M-2.

6. One Trial Court order dated 12th May 2004 denied the Petitioners' request for jury trial and the other denied full discovery requested by the Petitioner. As the facts of the case show, the denial of the relief requested by the Petitioner constituted inter alia denial of due process rights of the petitioner under the facts and circumstances of the case.

7. The denial of the requested relief by these two orders also constituted denial of equal protection of the laws to the Petitioner and it not only condoned the frauds committed by the Petitioner's Attorney Mr. David M. Fried in collusion with Attorney Mr. Howard J. Beck representing the Plaintiffs in Case No. 02CV 384 and Attorney Mr. Richard S. Strauss representing the Plaintiffs in Case No. 01CV 0222 against the Petitioner and the Courts. This denial seems to even encourage and promote such frauds by attorneys.

8. The State Court also failed to take notice of the fact that the Attorneys Mr. David M. Fried and Mr. Howard J. Beck abused the court premises of Court No. 401, Arapahoe County District Court, to unleash grievous racist attacks on the Petitioner's present Attorney Dr. Kishan K. Khanna and obtained a contempt citation against the Petitioner and order for arrest and indefinite incarceration without bail against the Petitioner by material misrepresentations. This further resulted in denial of due process rights of the petitioner, equal protection of laws, and a free, fair and impartial trial guaranteed to every citizen.

9. The above denial of the fundamental rights of the Petitioner in Case No. 02 CV 384 was in continuation of the denial of



fundamental rights of the Petitioner in the Case No. 01CV 0222 in Court No. 206, Arapahoe County District Court. Although these two cases are not related, these two cases were got linked by some ingenuous device to commit collusive fraud against the Petitioner and deprive the Petitioner/ RTG-TPD Trust established by him, their property without due process and equal protection of laws.

10. The Petitioner further submits that acting under the color of state law, the Trial Court in Case No. 02 CV 384 denied the Petitioner due process rights and equal protection of laws by not permitting the necessary full discovery to the Petitioner while this Trial Court and all trial courts are expected to and do conduct trials only after full discovery opportunity has been provided to both parties so that the trial is free, fair and impartial.

11. The Petitioner submits that the collusive frauds committed by the Petitioner's own attorney against the Petitioner and the courts in the two cases No. 01 CV 0222 and No. 02 CV 384 created exceptional circumstances requiring special relief for the Petitioner so as to ensure free, fair, and impartial trial as per state laws.

12. By its denial the court treated the Petitioner unfairly and unequally with great bias because Mr. Fried was an attorney, and he was colluding with other attorneys to defraud the Petitioner and the courts, and thus the court violated equal protection clause of the 14th Amendment. Therefore this Petition has been filed under Section 1981 of Title 42. On the contrary, the Petitioner was further punished by the Court of Appeals by assessing Attorney Fees against the Petitioner, treating the case of fraud by one's own attorney as a routine affair in the courts of Colorado.

13. The case is similar to the case of a person raped in the Police Station by Police officers and then further punished for

filing a complaint against the Police officer and being labeled as an unruly and disorderly inmate.

14. The Petitioner has exhausted all possible remedies available in the State Courts, by further approaching the Supreme Court of Colorado but the Petitioner was denied relief due in law.

15. The Petitioner files this Petition to protect his civil rights by relief ordered by the US Supreme Court.

16. Under Brooker-Feldman doctrine, US District Court has no authority to review final judgments of a state court in judicial proceedings. A review of such judgments may be had only in the United States Supreme Court.

17. The Petitioner relies on *Zinermon v. Burch* 110 S. Ct., 975 at 982-983 :

*In Monroe, this Court rejected the view that Section 1983 applies only to violations of Constitutional rights that are authorized by state law, and does not reach abuses of state authority that are forbidden by the State's statutes or Constitution or are torts under the State's Common law. It is explained that Section 1983 was intended to not only "overrule" discriminatory or otherwise unconstitutional state laws and provide a remedy for violation of civil rights "where state law was inadequate," but also to provide federal remedy where the state remedy, though adequate in theory was not available in practice."*  
365 U.S. at 1173-1174, 81 S. Ct., at 467-77.

*It is no answer that the State has a law which if enforced would give relief. The federal authority remedy is supplementary to the State remedy, and the latter need not be first sought and refused before the federal one is invoked. Id. 183, 81 S. Ct. at 481.*

18. The Petitioner further relies on the Cleveland Bd. of Edu. v. Loudermill, 105 S. Ct., 1487 at 1493:

*As relating to the due process clause, provision that substantive rights of life, liberty and property cannot be deprived except pursuant to constitutionally adequate procedures, categories of substance and procedures are distinct.; once it is determined that the due process clause applies, question remains what process is due. USCA Const. Amend 5, 14.*

*An essential principle of due process is that a deprivation of life, liberty and or property be preceded by notices and opportunity for hearing of appropriate to the nature of the case. USCA Amend. 5, 14.*

19. The Petitioner further relies on the following judgments of the US District Courts for guidance in the matter of filing this Petition for a writ of certiorari before this Court.

(i) **Henniger v. Pinellas County, 7 F Supp. 2 d 1334.**

*(a) Violation of procedural due process may provide foundation for Section 1981 claim. USCA Const. Amend 14; 42 USCA Section 1983.*

*(b) Only when the procedural remedies are denied does the constitutional violation of due process becomes ripe under Section 1983. USCA Cons. Amend. 14: 42 USCA Section 1983.*

*(c) Violation of procedural due process occurs only when state refuses to make available means to remedy deprivation. USCA Const. Amend. 14.*

**(ii) Wallace v. Bd. of Regents of University Sys. Of GA, 967 F. Supp. 1287 (S.D. Ga. 1997)**

*For claim to succeed under Section 1983, plaintiff must show that a person acting under color of state law deprived him of federal or constitutional right. 42 USC Section 1983.*

*Allegation of violation of procedural due process rights under Fourteenth Amendment claim under Section 1983. USC Const. Amend. 14; 42 USC Section 1983.*

*Procedural due process violation do not occur until state fails to provide an adequate remedy. USC Const. Amend. 14.*

**(iii) Lepellier v. FIDC, 164 F. 3d 37 (DC. Cir. 1999)**

*Non-compliance with state law may support Section 1983 claim alleging federal due process violation. USC Const. Amend. 14; 42 USC Section 1983.*

*When presented with due process challenge, court must determine first whether there has been deprivation of property interest and if so what process is due. USC Amend. 5.*

**(iv) Berg.v. Egan, 979 F. Supp. 330 (E. FD. Pa. 1997)**

*(a) Equal protection Clause of fourteenth Amendment reassures that no state shall deny to any person within its jurisdiction the equal protection of laws; therefore, similarly situated people should be treated alike. USC Const. Amend. 14.*

*(b) To maintain equal protection claim when plaintiffs are not in suspect class and no fundamental right is involved, plaintiffs must first show that they were treated differently from others similarly situated, then*

*prove that this different treatment was intentional discrimination; and finally must show that defendant had no rational basis for treating plaintiffs differently.*  
USCA Const. Amend. 14.

20. The Petitioner submits that both the trial courts - trying case No. 01 CV 0222 and Case No. 02 CV 384, acted under the color of state law to violate the civil rights of the Petitioner - and even his attorney Dr. Khanna -- and actually deprived and further are in the process of depriving the Petitioner of his property without procedural due process.

21. The Petitioner relies on *Berg v. Egan* 979 F. Supp. 330.

*To establish a claim under Section 1983 for violation of rights protected by due process, plaintiff must demonstrate that defendants are state actors that they deprived him of constitutionally protected liberty or property interests without due process.* USCA Const. Amend. 14: 42 USCA Section 1983.

### CONSTITUTIONAL PROVISIONS AND RULES

(i) US Constitution Amendment 5: Due Process. " No person .... Nor be deprived of life, liberty, or property, without due process of law."

(ii) US Constitution Amendment 14: Due Process: " .....nor shall any State deprive any person of life, liberty , or property without due process of law."

(iii) US Constitution Amendment 14: Equal Protection: "...nor deny to any person within its jurisdiction, the equal protection of the laws."

(iv) US Constitution Amendment 14: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(v) US Constitution 7th Amendment: In Suits in common law, where the value of in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and the fact tried by jury, shall be otherwise examined in any court of the United States, than according to the rules of common law.

#### **COLORADO LAWS**

- (ii) Rules 4, 12, 16, 26, 38, 52, 54, 58, 59, 60, 79, 97 and others of Colorado Rules of Civil Procedure
- (iii) Colorado Rules of Evidence
- (iv) Colorado Rules of Professional Liability 8.2, 8.3, 251.23, 251.23 and others
- (v) Canon 3 of Colorado Code of Judicial Conduct
- (vi) Colorado Appellate rules
- (vii) CRS (Colorado Revised Statutes) 7-80-702, 7-80-703,
- (viii) CRS 13-17-101, 13-17-102, 13-17-103

#### **STATEMENT OF THE CASE**

##### **I. RELEVANT FACTS OF UNDERLYING CASES IN BRIEF**

###### **(a) Projects Established by the Petitioner**

1. In late 1998 the Petitioner, a citizen of New Jersey State, a qualified and successful Accountant, issued a prospectus inviting investments from prospective investors for 3 projects to be set up in the Denver Metro Area. The Petitioner registered 3 entities for this purpose:



- (i) 2050 S. Havana LLC (DTSE) for owning and operating a shopping Mall,
- (ii) Korean & Japanese Supermarket, for selling oriental groceries, and
- (iii) K-RODEO Promenade for a restaurant catering to the oriental taste.

2. The following investors invested in the three projects:

- (i) Chang M. Yi
- (ii) DTSE Trust
- (iii) RTG-TPD Trust
- (iv) John Jun
- (v) BJAD Family Trust

3. All the three projects were established in 1999. Originally 100% of shares were owned by RTG-TPD Trust, the irrevocable family trust established by the Petitioner. As the investors made their investment, they were issued shares according to their investment, and the share percentage of RTG-TPD was correspondingly reduced. The shares of RTG-TPD Trust represented the initial investment of the petitioner in cash, sweat, and as a promoter, financial adviser, and incorporator of the three projects.

4. During the period 1998-2000, apart from his other functions as the promoter, coordinator of the projects, and financial adviser, the Petitioner also served as Operating Manager of the entities with defined terms and conditions of salary and perks as incorporated in the Operating Agreement of the entities.

5. Two projects 2050 S. Havana LLC, and KOMART Supermarket became instant huge success, and the investing members enjoyed the benefits of the quick appreciation of

their investment and sizeable income from their investment ensued.

6. However, the third project K-RODEO Promenade for food project, SAAN Restaurant project, failed largely because the expected level of investment was not made by the investing members. The members placed the blame for the failure of this Project on the Petitioner, leading to strife and quarrels.

7. Over a period of time, animosity developed amongst some members and the Petitioner over the issues of control over the projects.

8. In view of the animosity, the Petitioner did not receive the salary and other dues. At first he had not taken his due salaries and perks as an indirect continued financial support to the units so as to reduce financial burden and subsequently due to the strife and quarrels.

9. The matters came to a head at the end of the year 2000 and the Petitioner was forced out of the projects and out of the State due to continuous disputes without receiving his remuneration for his work as Operating Manager for over 2 years.

**(b) History and Background of Litigation in Case Nos.  
01 CV 0222**

10. Since the third project of SAAN Restaurant could not succeed and it had to be abandoned it resulted in breach of the lease agreement leading to litigation by the landlord of the premises, 1880 S. Havana St, the Diane and Barney Katchen Trusts. The landlords filed Suit No. 01 CV 0222 in Arapahoe County District Court for recovery of due rent and damages against the third entity K-Rodeo Promenade LLC and the Petitioner as he was the guarantor of the lease agreement in his official capacity as the Operating Manager of the LLC at the relevant time.



11. Long after the Petitioner was forced out, the Members of the first two projects, 2050 S. Havana St., LLC and Korean and Japanese Supermarket (together known as KOMART LLCS) excluding the Member RTG-TPD Trust, filed a suit No. 02 CV 384 in Arapahoe County District Court against the Petitioner for alleged "stealing and conversion" by the Petitioner to the tune of over \$127,000.00.

12. The Petitioner filed a counterclaim suit for due salaries and other dues of over \$650,000 and other damages amounting to over 3.35 million dollars.

13. The following are some of the highlights of the proceedings in the case No. 01 CV 0222:

- i. In order to have it out on the Petitioner, the Members of the KOMART LLCS, assisted the Plaintiffs in the suit;
- ii. To avoid their own liability, the members of the KOMART LLCS (other than RTG-TPD Trust) acknowledged the service of the summons and complaint to the Petitioner by giving the signatures of their own employee Jay Jung on 31st January 2001, falsely claiming that he was acting in service on behalf of the Petitioner, when actually he was the employee of KOMART LLCS, and he was never authorized by the Petitioner.
- iii. The Plaintiffs in Case No. 01 CV 0222 tried to obtain default judgment based on a false Return of Service allegedly to Jay Jung as per the Return of service sworn on 5th February 2001. Apx. A-1.
- iv. However, the Clerk of the Court pointed out that the service was not legally done to the Petitioner and therefore default could not be registered. Apx. A-2 and case was to be dismissed. Apx. A-3.

- v. The Plaintiffs then got another Return of Service sworn in May 2001 after nearly 3 months by the same server, with materially false statement of service. Apx. A-4.
- vi. The Plaintiffs obtained a default judgment of approx. \$ 38,000 against the Petitioner. Apx. A-5.
- vii. The Plaintiff then moved the court to obtain a higher level of judgment against the Petitioner with the help of the adversaries of the Petitioner, which was first denied by the court. Apx. A-6.
- viii. A default judgment of \$94,442.30 was then obtained by the Plaintiffs by further misrepresentations. Apx. A-7.
- ix. The Plaintiffs then obtained a Garnishee Order against the Petitioner in his absence and requested the Members of the KOMART LLCS, to transfer the interests of the Petitioner in the KOMART LLCS.
- x. The Trustee of RTG-TPD Trust had considerable correspondence on the subject of transfer of part of the shares of RTG-TPD to other persons. Apx. B-1 to B-7.
- xi. The KOMART LLCS, then through their attorney Mr. Beck advised the Plaintiffs categorically that the shares did not stand in the name of the Petitioner but in the name of RTG-TPD. Apx. B-8.
- xii. It is relevant to point out that the Articles of Association of the LLCS provided a specific method of transfer of the interests of the shares and also any transfer was to be as per CRS 7-8-702 and 7-8-703.

**(c) Linking of Case No. 01 CV 0222 and Case No. 02 CV 384**

14. The Petitioner engaged the services of a Denver based attorney Mr. David M. Fried since the Petitioner was residing in California on contingency basis. But instead of helping his client the Petitioner, Attorney Mr. Fried went about making efforts for settlement against the interests of his own client and very curiously allowed the KOMART LLCS to become Intrervenors in Case No. 01 CV 0222 - Apx. B-9.

15. Earlier, the same members had pleaded that they had nothing to do with the K-RODEO PROMENADE to get out of the Case No. 01 CV 022 so as to place the whole liability on the shoulders of the petitioner - who on the contrary had limited liability as a guarantor.

**(d) Hearing Conducted by Trial Court in Case No. 01CV 0222on the Issue of Invalidity of RTG-TPD Trust and Order of Compulsory Mediation in Case No. 02 CV 384**

16. Wirth the help of the Members of the KOMART LLCS, the Plaintiffs set out to prove that the RTG-TPD Trust was an invalid Revocable Trust and the Petitioner was an alter ego of the RTG-TPD Trust. The Plaintiffs filed a Motion for a hearing on 2 specific issues. Apx. C-1.

17. This was confirmed by the Plaintiffs by another supplemental hearing brief. Apx. C-2.

18. Very strangely, during the hearings, the Petitioner's Attorney Mr. Fried refused to defend the Petitioner pleading some conflict of interest.

19. But despite the inactive role played by the Attorney Mr. Fried the Plaintiffs Katchen Trusts failed to prove that the RTG-TPD Trust was an invalid Trust. Please see the

conclusion in the Oral Order of the Trial Court dated 3rd October 2003. Apx. C-3.

20. It was later found that the Attorney Mr. Fried had refused to defend the Petitioner and the RTG-TPD Trust as a part of the collusive strategy worked out by Attorney Mr. Fried with the Attorneys of the Plaintiffs Mr. Richard S. Strauss, and the Attorney of the Intervenor Mr. Howard J. Beck - so that the Petitioner will not have any bargaining power in Case No. 02 CV 384 if he loses in the case No. 01 CV 0222. It was collusively planned that then the Petitioner could be forced to sit down on the negotiating table and forced to sign a "global settlement" which would provide that:

- (a) The Petitioner admits the claims of the Plaintiffs in the Case No. 01 CV 0222;
- (b) The Petitioner agrees to the transfer of the shares of RTG-TPD Trust to the Plaintiffs;
- (c) The Petitioner agrees not to appeal against the order of the court;
- (d) The Petitioner agrees to withdraw his counterclaims against the Plaintiffs in the Case No. 02 CV 384.
- (e) In return, the Plaintiffs in the case No. 02 CV 384 will withdraw their claims against the Petitioner;
- (f) And the Plaintiff will not be required to pay any amount as attorney fees to his own attorney Mr. David M. Fried and to other attorneys Mr. Richard S. Strauss and Mr., Howard J. Beck.

21. Since the Oral Order of the Court 3rd October 2003 was not in accordance with law, the Petitioner filed a Rule 59 Motion on 16th Oct. 2003 and the Trial Court issued a written order of findings of facts etc. dated 9th January 2004 in violation of Rule 59 (j) CRCP. Apx. C-4

22. The Petitioner filed a Notice of Stay and Amendment of the Written Order dated 9th Jan. 2004 on 23rd January 2004, and the Trial Court passed an order dated 30th Aug. 2004. Apx. C-5.

23. The Petitioner filed an Appeal which was registered as 04 CA 2077 and the Court of Appeals dismissed the same eventually on 12.24.04, Apx. C-6.

24. The Petitioner then filed a writ for certiorari and the same was denied by the Supreme Court of Colorado. Apx. C-7.

25. Actually, Case No. 01 CV 0222 and 02 CV 384 were unrelated because the plaintiffs in these two cases are different and each Plaintiff is prosecuting a claim under different provisions of law.

26. However, very strangely these two cases were got linked by some strange argument with the support of the Petitioner's Attorney Mr. David M. Fried, basically to combine the efforts of two plaintiffs against the Petitioner and even a formal order of the court obtained jointly by the Attorney of the Petitioner. Apx. B-10.

27. This linking of the two cases actually facilitated the collusive fraud against Petitioner by the Petitioner's Attorney Mr. Fried.

28. Thus instead of safeguarding the real interests of the Petitioner, Attorney Mr. David M. Fried became a part of the ingenious scheme devised by the Attorney of the KO-MART LLCS Mr. Howard J. Beck to make the KOMART LLCS "intervenor" and then work out an alleged "global settlement" to ruin further the Petitioner's interests.

29. When the Petitioner expressed his reservations that it was not in his interest to sign the proposed "global settlement" worked out between the attorneys, Mr. Fried and Mr. Beck contrived to get a contempt motion granted by the Honorable

Court in Case No. 02 CV 384 with threat of indefinite incarceration without bond.

**(e) Transcript of Proceedings of the Case No. 02 CV 384 on 21st Nov. 2003, 3rd June 2004, and 6th June 2004**

30. The collusion between the Petitioner's Attorney Mr. David Fried and the Plaintiff's Attorney Mr. Howard J. Beck was highlighted by the expression of extreme frustration and the blatantly racist and libelous attacks against the Petitioner's present Attorney Dr. Khanna in open court forum as recorded in the transcript of the proceedings in Case No. 02 CV 384 dated 21st Nov. 2003, 16th April 2004, copy annexed as Apx. D.

31. The transcript of the proceedings of 21st Nov. 2003 in Case No. 02 CV 384 also shows that slanderous, malicious, and racist attacks against him to paint him in poor light as an unruly, imbecile, incapable, irrational, unprofessional attorney etc. etc. attorney, amongst others trained in Bombay, and with a language Hindu -in his absence, and when he was not connected with the present case No. 02 CV 384 before the Honorable Judge Marilyn Leonard:

- "for us two plus two is equal to four but for him ..... you can not argue with him as a professional -- which is not like what they have here-- the work of good judges like Hannen -- and piled up mountains of paper on his desk -- filed Motions -- one after another on his desk - no, not on his desk but in his computer to clutter up his computer so that the Judge could not pass any order -- and he is an "Indian" - "Asian Indian" - speaks English as "Second Language" - his mother tongue is HINDU -the "nuances" are lost - he speaks English like my client - born in Korea -- etc. etc."



32. Further, when the Petitioner could not come to Colorado to attend the hurriedly arranged mediation for "global settlement" on 16th March 2004, a Contempt Motion verified by Mr. Beck for "disobedience of court orders" was approved by the Honorable Judge even before the fixed date of Mediation on 16th March 2004. Apx. H-1 and Apx. H-2.

33. The Attorney Mr. Beck made material misrepresentations to the Court as revealed by the correspondence on the subject represented by documents annexed as Apx. E, F, G-and G-2 and Apx. I .

34. Also, Attorney Mr. Fried -- technically continued to be the Petitioner's Attorney - his withdrawal Motion having been approved only on 16th April 2004.

35. Although the petitioner personally appeared before the Honorable Court on 16th April 2004 and offered himself for the proposed mediation at that time -- whereas on the contrary Mr. Beck's clients absented -- the Petitioner was still liable for the alleged "disobedience of court orders" - on the plea that his participation was not in good faith.

36. According to Mr. Beck, the Petitioner did not attend in "good faith" as required by the court, since he refused to sign on the dotted line - and therefore the Petitioner had committed contempt by disobedience of court order-making him liable for imprisonment and attorney fees for following up the contempt Motion against the Petitioner.

37. Copy of the transcript of the proceedings in case No. 02 CV 384 in Court room No. 401 on 3rd June 2004 is annexed as Apx. J. The transcript of the proceedings in Case No. 02CV 384 on 3rd June 2004 also shows how successfully and totally Mr. Fried and Mr. Beck prejudiced the Honorable Judge Marilyn Leonard by their malicious racists attacks against Petitioner's present Attorney Dr. Kishan K. Khanna;

38. Only after a Motion to recuse was filed against the Honorable Judge Marilyn Leonard, it was accepted by her on 25th June 2004 that no contempt was in fact committed and in fact Mr. Beck was admonished for filing a huge bill for attorney fees purportedly "as per orders" of the court. A copy of the transcript of the proceedings of the court on 25th June 2004 is annexed as Apx. K.

39. It is also pointed out that the Honorable Judge permitted willingly the abuse of the court forum of room No. 401 as country club bar room, for libelous racist attacks against an attorney who had not even appeared before her at any time and passed remarks against his alleged professionalism, qualifications and training etc.etc. on 21st Nov. 2003.

40. The Appendix K also contains the submissions of the Attorney Dr. Khanna explaining his personal humiliation at the hands of Honorable Judge Marilyn Leonard mainly at the instance of Mr. Beck with his false racist attacks against Dr. Khannsa earlier on 21st Nov. 2003 and 16th April 2004.

41. A copy of her order for recusal dated 16th April 2004 is annexed as Apx. L.

42. Incidentally, in her order, the Honorable Judge found that the first two motions for recusal filed in the name of the Petitioner were not supported by an affidavit - although actually they were.

43. This single instance -more than anything else, in addition to what has been stated above, speaks volumes about the manner in which court proceedings are carried out in this court -- vis a vis the expected free, fair and impartial judicial process.



**(f) Petitioner's request for Jury Trial and Further Discovery in Case No. 02 CV 384**

44. Since the Petitioner's former Attorney Mr. Fried had not safeguarded and in fact jeopardized the interests of the Petitioner in both suits - he being more interested in making the Petitioner sign the "global settlement" -- he did not demand a Jury Trial and did not make fully discovery.

45. The present Attorney therefore requested for jury trial and full discovery, specially explaining the underlying fraud committed by the Petitioner's attorney against the Petitioner.

46. It was pointed out that the jury trial will afford at least some safeguard against arbitrary and capricious orders of a Bench trial as had been the experience of the Petitioner in both cases.

47. These motions were rejected by the Honorable Judge Marcus in a routine manner without giving any reason whatsoever or a hearing, copy of the scribbled laconic orders on the Motion and response papers are annexed as Apx. M-1 and Apx. M-2.

48. An Appeal was filed against these orders, explaining that although these were pre-trial interlocutory order in the normal sense, yet in view of the collusive fraud and the effect it will have on the fundamental rights and claims of the Petitioner, the Appellate court be pleased to consider them as "final orders" and grant relief drawing support from various judgments of the Honorable Supreme Court and court of Appeals listed below, since amongst other things, the Petitioner's constitutional rights of due process had been adversely affected by the fraud perpetrated by the Petitioner's previous attorney in collusion with the Attorneys of the Plaintiffs in the two underlying cases:

(i) Kerwin v. District Court , 649 P. 2d 1086;

- (ii) Lucas v. District Court, 345 P 2d 10655;
- (iii) In Re Marriage of Gance , 36 P. 3d 114; and
- (iv) Guevara v. Foxhoven, 928 P. 2d 793.

49. The Honorable Appellate Court found that the order appealed against is not a "final order" and therefore the Appeal was dismissed , copy annexed as Apx. N.

50. Further, not taking into account the underlying fraud in the Case No. 02 CV 384 and 01 CV 0222, it also assessed Attorney Fees to punish the Petitioner and his present Attorney with vengeance -- though as submitted above, the Appellant had very clearly pleaded that though the order appealed against was not a final order, the Jury trial and further discovery was demanded as a part of the guaranteed free, fair and impartial justice and due process.

51. The assessment of Attorney Fees is also against CRS 13-17-102-106 - and appears to have been imposed against the Petitioner in the same manner as Honorable Judge Marilyn Leonard was predisposed to penalize the Petitioner and his present Attorney on the basis of mere misrepresentations by Attorneys Mr. Fried and Mr. Beck.

52. It is also very interesting to note that revealing his extremist racist attitude and frustration at having been caught for the collusive fraud, Plaintiff's Attorney Mr. Beck followed up his efforts against the Petitioner's Attorney Dr. Khanna by filing a "request" for investigation of "mental disability" of Dr. Khanna before the Attorney Regulation Counsel.

53. The Plaintiff's Attorney Mr. Beck also requested the Attorney Regulation Counsel under Rule 251-23 that Dr. Khanna be not permitted to represent the Petitioner in Case No. 02 CV 384 and the Attorney Regulation Counsel was

pleased to order an investigation on the basis of a simple request of Mr. Beck.

## **II. REASONS FOR GRANTING WRIT**

### **(a) Interference with Free, Fair, and Impartial Judicial Process in both cases by Collusive Frauds by Petitioner's Attorney Mr. David M. Fried against Petitioner & Court**

54. The Petitioner filed a Petition for a writ of certiorari before the Supreme Court to Colorado but the petition was rejected. It appears that the State superior courts do not condemn the fraudulent acts of an Attorney like Mr. Fried against his own client, but seem to support and encourage such conduct by punishing on the contrary the Petitioner by awarding attorney fees against him. The interference has led to denial of equal protection of laws and denial of due process rights to the Petitioner.

### **(b) Null and Void Nature of Orders of Trial Court in Case No. 01 CV 0222 passed on 10-3-03, 01-09-04, and 08-30-04**

55. In the same way, the Court of Appeals had rejected the Appeal No. 2077 for the technical reason that the Appeal was filed against the order passed on 30th Aug. 2004 which was a NULLITY because that order of 30th August was passed in violation of Rule 59 (j) CRCP after more than 60 days of the filing of the Motion under Rule 59.

56. It is clear that amongst other things, by the same token, the court order dated 9th January 2004 Appx. C-4 was itself a nullity because it was passed after more than 60 days of filing the Rule 59 Motion dated 16th October 2003, against the oral order dated 3rd October 2003.

57. It would thus appear that the Petitioner cannot have any remedies against the frauds committed by his own attorney.

58. Most importantly, apart from the violation of procedural aspects of due process rights of the concerned parties, the Trial Court transferred the shares valued at over \$650,000.00 to the Plaintiffs to satisfy a judgment of only \$94,000.00 in their favor, thus making Plaintiffs unjustly enriched by over \$550,000.00.

59. The Honorable Judge Mark J. Hannen passed a NULLITY oral order on 3rd October 2003, not based on the evidence presented and not on the issues identified before the hearing, but on a different issue and on the evidence not presented during the hearing -- in violation of Supreme Court ruling, natural justice, Colorado Revised Statutes, and due process rights of the parties guaranteed in the 14th Amendment of the US Constitution.

(i) Credit Investment & L. Co. v. Guaranty Bank & T Co., 444P. 2d 633: *Findings of fact by court should respond to and be within the issues, and a finding outside the issues cannot be supported, and cannot be used to formulate a judgment.* "

(ii) Redman & Scripp, Inc. v. Douglas, 400 P.2d 231: "... In a trial to the court findings which are inadequate as a matter of law cannot be upheld by us on review." Uptime Corporation v. Colorado Research Corporation, 161 Colo., 87, 420 OP. 2d 232.

60. Further this order was not based on the facts and documents presented in the Hearing;

(a) it was based on some stray pieces of documents whose identity and authenticity was in doubt and was still to be established;

(b) it was based on some stray side pleadings of the Plaintiffs;

(c) it was in gross violation of due process rights of the Petitioner guaranteed in the 14th Amendment to the US Constitution;

(d) it did not recognize that not only the RTG-TPD Trust but other parties who had legally purchased the shares long ago as per the records of the KO MART LLCs and paid for the same had been deprived of their property in violation of due process rights under 14th Amendment of the US Constitution;

(e) the proposed transfer was also in violation of the procedure stipulated in the Operating Agreement of the entities; and

(f) the proposed transfer was in violation of the Colorado Revised Statutes CRS 7-80-702/703.

61. Despite the above, the Petitioner's Attorney Mr. Fried, appeared to be overjoyed with the verdict of transfer of the shares of RTG-TPD Trust valued at over \$650,000 to satisfy a judgment of \$94,000, and further advised the Petitioner on 3rd October itself that the shares of RTG-TPD had been already transferred by the Intervenors on hearing the oral order of the Trial Judge on 3rd October 2003.

62. No special circumstances or emergencies existed that compelled the Honorable Judge to decide on some unknown and undeclared issue for which no evidence was either requested or presented and another hearing could be fixed for the new issue or issues.

63. This order arbitrarily transferred shares property of the Owners valued at over \$ 650,000 in favor of the Plaintiffs Diane Katchen and Barney Katchen Trusts to satisfy a garnishee order of only \$ 94,000 -- thus giving a windfall of unjust enrichment to the Plaintiffs.

64. This order was also in gross violation of the due process rights of RTG-TPD Trust and other owners - and rulings of superior courts;

65. This order was also in gross violation of CRS 7-80-.702, and 7-80-703.

66. Thus the Honorable Judge Mark J. Hannen passed as many as THREE Nullity orders in succession :

(i) on 3rd October 2003;

(ii) on 9th January 2004; and

(iii) on 30th Aug. 2004.

67. Further, these orders were passed repeatedly in violation of due process rights of equal protection of laws and equality before the courts guaranteed in the 14th Amendment to the US Constitution.

68. The Honorable Judge thus deprived in one stroke the RTG-TPD Trust and other shareholders of KOMART LLCs, without due process their property worth over \$ 650,000.00.

**(c) Interference with Free, Fair & Impartial Judicial Process by Racist Libelous Attacks Jointly by Petitioner's Attorney with the Plaintiff's Attorney Mr. Howard J. Beck in Case No. 02 CV 384-further joined by the Honorable Judge Marilyn Leonard**

69. In the Case No. 02 CV 384 -- as a "linked case"-- Honorable Judge Marilyn Leonard permitted free use of the public forum of court room to Plaintiffs' Attorney Mr. Howard J. Beck and the petitioner's Attorney Mr. David M. Fried, to make false and libelous racist attacks against the Petitioner's present Attorney Dr. Khanna - even though Attorney Dr. Khanna had not even appeared before her, and he was only following his duty as an Attorney to file perfectly



legal motions in another case, and in another court-which shows that the proceedings in this case were thoroughly vitiated by totally discriminatory and injudicious acts of the Trial Court in violation of Colorado Rules of Judicial Conduct. The Transcript of the proceedings show that the Honorable Judge joined in the attacks with her own comments in support.

70. Thus, instead of stopping Mr. Beck and Mr. Fried from continuing their racist attacks against the Petitioner's yet to be appointed future attorney, the Honorable Judge Marilyn Leonard even encouraged them to continue and aggravate their racist tirade against Dr. Khanna by her own interjections.

71. There is no doubt that the Honorable Judge Marilyn Leonard got tremendously biased against Attorney Dr. Khanna because when Attorney Dr. Khanna eventually appeared before Honorable Judge Marilyn Leonard on 3rd June 2004 for the first time to represent the Petitioner, she subjected him to most humiliating treatment as an attorney.

72. Honorable Judge Marilyn Leonard apparently permitted abuse of the court process apparently because she was impressed by the length of claimed legal practice of 33 years of Attorney Mr. Beck and 20 years of Mr. Fried, thus further violating the Constitutional rights of equality before laws and equal protection of laws of Attorney Dr. Khanna and the Petitioner.

73. In effect the above undermined the very basis of a free, fair and impartial judicial process, equal protection of laws under the 14th Amendment, due process rights under the 5th and 14th Amendment, and a free, fair and impartial trial - guaranteed to the Petitioner and -- which the courts are expected to uphold, preserve, and protect.

74. Also, on his failure to attend the mediation on 16th March when his own attorney Mr. Fried continued to represent him, Honorable Judge Marilyn Leonard passed a contempt citation against the Petitioner without verification of true facts denying equal protection of laws and due process to the Petitioner, and even ordered an arrest warrant for indefinite incarceration of the Petitioner without bond - also violating the Colorado Rules of Judicial Conduct and denying equal protection of laws and due process rights to the Petitioner.

**(d) Denial of Equal Protection of Laws to Petitioner and Petitioner's Attorney**

75. The above violations of the Constitutional rights of the Petitioner were further aggravated by the Plaintiff's Attorney Mr. Howard J. Beck when he followed them up with a complaint on alleged "mental disability" of the Petitioner's Attorney Dr. Khanna to the Attorney Regulation Presiding Judge. Perhaps impressed by the claim of 33 years of legal practice by Mr. Howard J. Beck the Regulation Counsel followed it up with investigation against the Petitioner's Attorney. This step was obviously to intimidate the Petitioner's Attorney - thus further interfering with a free, fair and impartial judicial process. The specific rule under which Mr. Beck claimed to have filed the complaint does not permit the Opponent's Attorney to allege mental disability against the Opponent's Attorney-and for good reason. But still the Attorney Regulation Counsel started the investigation leading to interference with the free, fair and impartial judicial process at the behest of Mr. Beck - in the same manner Honorable Judge issued a contempt citation against the Petitioner followed by order for arrest and indefinite incarceration without bond. All this led to denial of equal protection of laws and due process rights of the petitioner under the 5th and 14th Amendment.



76. These special steps appear to have been undertaken to cover up the underlying collusive frauds of the Petitioner's Attorney Mr. Fried with the help of Attorney Mr. Howard J. Beck and Mr. Richard S. Strauss. The Attorneys are considered officers of the court - and they deprived the Petitioner his property rights without due process.

77. This also raises serious questions of unprofessional and unethical conduct of attorneys and callous persecution by them of an innocent client - and the Attorney Regulation Counsel appeared to favor such attorneys.

78. Therefore this matter must receive attention of the US Supreme Court, since the very institution of justice and constitutional safeguards have been undermined by the deftly executed fraud against the Petitioner and the court. This strikes at the very roots of a free, fair and impartial judicial system guaranteed under the Constitution of USA.

### **III. RELIEF REQUESTED BY THE PETITIONER**

79. The trial in case No. 01CV 0222 be declared a mistrial and the case remanded for de novo trial, setting aside the default judgments, and NULLITY orders of the Trial Courts, especially those passed on 3rd October 2003, 9th January 2004 and 30th Aug. 2004, and Appellate court orders dated 24th Dec. 2004, staying the operation of these orders in the interim.

80. In view of the special circumstances pointed out, jury trial and further discovery be permitted to the Petitioner in the Case No. 092 CV 384 setting aside the orders of the Trial Court dated 12.15.04 and the Appellate Court orders dated 1st February 2005 in Appeal No. 04 CA 2675, staying these orders of the District Court and the Appellate Court in the interim.

81. Suitable relief against the Attorneys Mr. David M. Fried and Mr. Howard J. Beck for abuse of the public court room forum of Court No. 401 for malicious slanderous per se racist attacks against Petitioner's present attorney Dr. Khanna.

82. Suitable action against Attorney Mr. Howard J. Beck for malicious, libelous and slanderous attacks and allegations imputing "mental disability" of Attorney Dr. Khanna for his "request" to the Attorney Regulation counsel under Rule 251.23.

83. Costs and Attorney Fees against the Respondents and in favor of the Petitioner.

#### **IV. PRAYER FOR INTERIM RELIEF**

84. In view of the serious violation of the statutory and constitutional rights of the Petitioner, and serious far reaching adverse repercussions thereof on the final outcome in of the two underlying cases, it is humbly and respectfully prayed that the Honorable Supreme Court be pleased to stay further operation of the order of the Trial Court dated 3rd October 2003, or 9th January 2004 in Case No. 01 CV 0222, in Arapahoe County District Court No. 206 and orders dated 12.15.04 and 12.15.04 in Case No. 02 CV 384. in Arapahoe County District Court No. 401.

Respectfully Submitted,

Stan J.H. Lee  
*Petitioner Pro Se*

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**APPENDIX A-1**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Dated 2/5/01**

---

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)

---

**RETURN OF SERVICE**

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF JEFFERSON )

Les J. Roberts, the affiant, being duly sworn says: that affiant is over the age of eighteen (18) and not a party to this action; and that affiant has duly served to STAN J.H. LEE the within

2a

Amended Summons, Complaint and Exhibits by handing said documents to Jay C. Jung, who stated he was authorized to accept service on behalf of the defendant, at 2040 S. Havana Street, Aurora, Colorado 80014 on the 31st day of January, 2001 at 4:00 p.m.

/s/ \_\_\_\_\_  
Affiant's Signature

Subscribed and sworn to before me this  
5th day of February, 2001.

Witness my hand and official seal.

My commission expires: 05/11/04

/s/ \_\_\_\_\_  
Notary Public

---

**APPENDIX A-2**

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Arapahoe County District Court  
7325 S. Potomac Street  
Englewood, CO 80112

**Request for Additional Documentation/Amended Return  
of Service Regarding Entry of Default STAN LEE**

Case Number - 01CV222

Caption: Diane Katchen Trust vs. K-Rodeo

The Clerk of the District Court, having reviewed the plaintiff's request for entry of default against STAN LEE finds the following information or documentation is necessary: amended service to show county of service in body of return. Also need further explanation of person served - authorized to accept is not sufficient. See Rule 4. Also connect the address to the defendant. Upon correction of the deficiency the original motion for default will be re-considered.

Please submit the requested documents to my attention marked "Personal and Confidential".

Clerk of the District Court

/s/ \_\_\_\_\_  
By: Linda Starr, Chief Deputy Clerk  
Dated: March 29, 2001

**Certificate of Mailing**

A copy of the above request for additional documentation/information regarding entry of default was mailed to the following on March 29, 2001"

Hochstadt, Straw, Strauss & Silverman  
Richard S. Strauss  
2043 York St.,  
Denver, CO 80205



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**APPENDIX A-3**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

**[Filed May 2, 2001]**

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)
	)

**Delay Reduction/Rule 16 Status Order**

It has come to the Court's attention that this case has been pending over ninety days, and the following has not been accomplished:

- X Service - Plaintiff was sent a letter describing inadequacy of service, amended proof of service has not been received.

Accordingly, the Court

- X Notifies you that this case will be dismissed without prejudice and without further notice thirty days from the date of this Order unless plaintiff/defendant takes the following indicated action(s).
- X Obtains service; Both defendants' proof of service is inadequate
- X Files a proper motion to dismiss;
- X Files a stipulation for settlement;
- X Files a statement showing good cause to avoid dismissal;

Dated 5/2/01

BY THE COURT

/s/

---

KENNETH K. STUART  
DISTRICT COURT JUDGE

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**APPENDIX A-4**

---

**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

**[Filed May 29, 2001]**

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THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)

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## AMENDED RETURN OF SERVICE

STATE OF COLORADO )  
 ) ss.  
COUNTY OF JEFFERSON )

Les J. Roberts, the affiant, being duly sworn, says: that affiant is over the age of eighteen (18) and is not a party to this action; and that affiant has duly served to STAN J.H. LEE the within Amended Summons, Complaint and Exhibits by handing said documents to Jay C. Jung MA, CPA., Mr. Lee's Chief Clerk, Bookkeeper and a Manager of DMHD Hamilton Clark & Co., located at 2040 S. Havana Street, Aurora, Colorado 80014 on the 31<sup>st</sup> day of January, 2001 at 4:00 p.m.

/s/ \_\_\_\_\_  
Affiant's Signature

Subscribed and sworn to before me this  
25th day of May, 2001.

**Witness my hand and official seal.**

My commission expires: 05/11/04

/s/ \_\_\_\_\_  
Notary Public

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**APPENDIX A-5**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

**[Filed August 7, 2001]**

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)
	)

**ORDER FOR ENTRY OF DEFAULT JUDGMENT**

THIS MATTER came on to be heard upon Plaintiffs' Motion for Entry of Default Judgment against Defendants and supporting Affidavits; the Court, having reviewed said Motion and Affidavits and being fully advised in the

premises, DOTH ORDER:

1. That judgment shall enter in favor of Plaintiffs, The Diane Katchen Trust and the Barney Katchen Trust, and against the Defendants, K-RODEO PROMENADE, a Colorado limited liability company and STAN LEE, individually, jointly and severally, as follows:

a. for damages in the amount of \$38,117.98, plus interest at 18% per annum thereon from March 1, 2001 until fully paid;\*

b. for costs herein, including the costs of filing this action and costs of service of process;

c. for attorney fees in the amount of \$6,170.00.

2. That venue has been considered by the Court and the Court finds that venue is proper in this Court; and

3. That the said Defendants are not an infant, incompetent, an agency or officer of the State of Colorado, and are not in the military service of the United States.

---

\* The Court has awarded no rent after March 1, 2001. Upon a showing by the Plaintiffs that they have performed their duty to mitigate damages by re-leasing the premises, the Court will consider a request to amend the judgment.



11a

JUDGMENT SHALL SO ENTER.

DONE AND SIGNED this 7 day of August, 2001.

BY THE COURT:

/s/ \_\_\_\_\_  
DISTRICT JUDGE

---

**APPENDIX A-6**

---

**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

**[Filed September 25, 2001]**

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)
	)

**MOTION TO ALTER OR AMEND ORDER  
FOR ENTRY OF DEFAULT JUDGMENT**

Plaintiffs, by and through their attorneys, HOCHSTADT,  
STRAW, STRAUSS & SILVERMAN, P.C., hereby move  
this Honorable Court to enter an amended Judgment by

default in favor of the Plaintiffs and against the Defendants, K-RODEO PROMENADE LLC, and STAN LEE, individually, jointly and severally, upon the Plaintiffs' Complaint, for damages in the amount of \$94,442.30, plus interest at 18% thereon from March 1, 2001 until fully paid, plus costs herein, including the costs of filing this action, and reasonable attorney fees.

AS GROUNDS THEREFOR, Plaintiff shows unto the Court:

1. On or about August 7, 2001, this Court entered its Order for Entry of Default Judgment, a copy of which is attached hereto and incorporated herein as Exhibit A.

2. Pursuant to the terms of said Order, the Court awarded no damages for rent after March 1, 2001. The Court further ordered that upon a showing by Plaintiffs that they performed their duty to mitigate damages by re-leasing the premises, the Court would consider a request to amend the judgment.

3. On or about May 1, 2001, Plaintiffs entered into a new lease for the premises which are the subject matter of this action, with Jang Hyon Kong and Yon Hwa Kong, as Tenants. A copy of said Lease is attached as Exhibit B.

4. As provided in said Lease, and as an incentive for the Tenants to enter into a ten year lease with Plaintiffs, Tenants are only paying \$7,096.77 for the first four months of the lease term. Thereafter, Tenants are paying at least \$10,000 per month on a graduated scale.

5. Accordingly, Plaintiffs will incur an additional \$11,621.16 per month in lost rent and common area fees for the months of March and April, 2001; lost rent for the months

of May, June and July, 2001 in the amount of \$10,000 per month; and will incur \$3,000 in lost rent for the month of August, 2001. Thereafter, the rent paid by the new Tenants approximates the rent which would have been paid by the Defendants.

6. As a result of the above, Plaintiffs have fully complied with their duty to mitigate damages, and notwithstanding their efforts, Plaintiffs will incur and additional \$56,324.32 in lost rent and common area fees as a result of Defendants' breach of lease.

WHEREFORE, Plaintiffs pray that the judgment awarded by the Court be increased in the amount of \$56,324.32, for a total of \$94,442.30, plus interest at 18% per annum from March 1, 2001, plus costs and attorney fees as previously awarded by the Court.

HOCHSTADT, STRAW, STRAUSS &  
SILVERMAN, P.C.

By: /s/ \_\_\_\_\_

Richard S. Straus, No. 7916  
Attorneys for Plaintiff  
2043 York Street  
Denver, Colorado 80205  
(303) 329-9222

Denied pending clarification to Court as to amounts defendants obligated to pay per paragraph 3.1 Exhibit A or otherwise.

9/25/01 /s/ \_\_\_\_\_

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**APPENDIX A-7**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

**[Filed October 31, 2001]**

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THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)

---

**ORDER FOR ENTRY OF DEFAULT JUDGMENT**

**THIS MATTER came on the be heard upon Plaintiffs' Motion for Entry of Default Judgment against Defendants and supporting Affidavits; the Court, having reviewed said**

Motion and Affidavits and being fully advised in the premises, DOTH ORDER:

1. That judgment shall enter in favor of Plaintiffs and against the Defendants, K-RODEO PROMENADE, a Colorado limited liability company and STAN LEE, individually, as follows:

a. for damages in the amount of \$94,442.30, plus interest at 18% per annum thereon from March 1, 2001 until fully paid;

b. for costs herein, including the costs of filing this action and costs of service of process;

c. for attorney fees in the amount of \$6,170.00.

2. That venue has been considered by the Court and the Court finds that venue is proper in this Court; and

3. That the said Defendants are not an infant, incompetent, an agency or officer of the State of Colorado, and are not in the military service of the United States.

JUDGMENT SHALL SO ENTER.

DONE AND SIGNED this 31 day of Oct, 2001.

BY THE COURT:

/s/

\_\_\_\_\_  
DISTRICT JUDGE



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**APPENDIX B-1**

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Miyung Lee, Trustee  
RTG-TPD Trust  
335 Continental Avenue  
River Bdge, NJ 07661-1401  
Tel) 201-262-8198  
e-mail) northstar82@aol.com

March 30<sup>th</sup>, 2002

Operating Manager of  
2050 S. Havana St. (DTSE) LLC  
Komart Shopping Center  
2000 S. Havana St  
Aurora CO 80014

Certified Mail (7001 2510 0005 0173 7805 & Return Receipt  
Request

This is formal notice to the company of my offer to sell and  
transfer the eight (8%) of the Trust shares in this entity.

The offer is for the amount of \$300,000.

Pursuant to the Buy-Sell Provisions of the Article IX of the  
operating agreement, you have 60 days from the offering  
party's notice to exercise option to buy the shares and with  
closings to take place at the end of such 60 day period.

In the event, the sale is not consummated by that time, I will  
reserve my right to sell and transfer subsequently the said

shares to another party subject to the related governing rules of the operating agreement.

Very Truly Yours,

RTG-TPD Trust

/s/ \_\_\_\_\_  
Miyung Lee  
Trustee

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**APPENDIX B-2**

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July 11, 2002

Mr. Kang Shin Kim  
As Legal Custodian of Michelle S. Kim  
98 Mount Pleasant Avenue  
Edison, NJ 08820

VIA CERTIFIED MAIL  
Return Receipt Requested  
7000 1670 0008 3443 6128

Re: 2050 S. Havana St. (DTSE), LLC

Dear Mr. Kim:

Please be advised that this law firm represents 2050 S. Havana St. (DTSE), LLC, a Colorado limited liability company ("Company"). At a meeting of the members of the Company held on March 8, 2002, Mr. Stan Lee presented to the members a letter dated March 7, 2002 which was signed by you. In that letter, there is an allegation that Michelle S. Kim is the holder of a 7% membership interest in the Company.

Please be advised that the Company does not recognize Michelle S. Kim as the holder of any membership interest in the Company. Further, any purported transfer of a membership interest in the Company from the RTG-TPD Trust or any other member to Michelle S. Kim has not been made in compliance with the requirements of the Operating

20a

Agreement of the Company. Therefore, any purported transfer to Michelle S. Kim of a membership interest in the Company is not valid and will not be recognized by the Company.

Thank you for your attention to this matter.

Sincerely,

BECK AND CASSINIS, P.C.

/s/

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Kenneth J. Frank

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**APPENDIX B-3**

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November 11, 2002

Mr. David M. Fried  
Attorney At Law  
140 East 19<sup>th</sup> Avenue, Third Floor  
Denver, CO 80203

Re: 2050 S. Havana St. And Komart v. Stan J.H. Lee

Dear Mr. Fried:

During the past 10 days Mr. Lee has corresponded with my partner, Kenneth J. Frank, and with the operating managers and other representatives of 2050 S. Havana and Komart concerning two separate issues.

**Transfer of Interest to Kang Shin Kim as Legal Custodian of Michelle S. Kim.**

Attached as Exhibit "A" are documents relating to this matter. It appears that Mr. Lee now desires that a 7% membership interest in 2050 S. Havana St. (DTSE), LLC be transferred to Mr. Kim as custodian of Ms. Kim. Mr. Lee references a notice from him to the company on April 21, 2001 and also makes reference to the "special meeting of members" on September 21, 2001. As noted in Mr. Frank's letter of July 11, 2002 to Mr. Kim, if Mr. Lee wishes to transfer a portion of the membership interest allegedly owned by the RTG-TPD Trust, he should do so in accordance with

the provision set forth in the Operating Agreement for 2050 S. Havana St. (DTSE), LLC.

We have discussed this matter with the Operating Manager of 2050 S. Havana St. (DTSE), LLC, Mr. Gun Soo Youn, who confirms that while Mr. Lee then wished to transfer a 10% membership interest (not 7%), the discussion of September 2001 meeting was that if he wished to do so he should follow the provisions of the Operating Agreement. Therefore, if you on behalf of the RTG-TPD Trust desire to request such transfer in accordance with the provisions of the Operating Agreement, you may do so and you may certainly direct that request to this law firm on behalf of our client.

Mr. Lee's gratuitous comments in his emails which he suggests or threatens legal action against Mr. Frank or this law firm are disingenuous. As Mr. Lee is very much aware, we are acting in accordance with instructions received from the 2050 S. Havana St. (DTSE), LLC, acting through its Operating Manager.

#### **Request for Expense Reimbursement**

This dispute seems to rise from a claim by Mr. Lee for additional expenses in the amount of \$250.00 (November 6, 2002 letter enclosed). The relevant documents and correspondence are attached hereto as Exhibit B. On August 19, 2002, Mr. Lee requested that he be allowed to review certain records of 2050 S. Havana St. and Komart. Ken Frank of this office responded to RTG-TPD Trust on September 4, 2002 suggesting that the document review occur at our offices. Mr. Lee objected to the document review being here at Back and Cassinis (we believed that this would be the least confrontational manner of giving Mr. Lee the opportunity to review documents and would allow him to



utilize our copy machines in the event he desired to do so). Therefore, as Mr. Lee acknowledges in his September 15, 2002 letter, he desired the inspection to occur at 3:00 p.m. on Wednesday, September 18 in his email dated September 18, 2002. In that same email, he unilaterally determined to reschedule the inspection and review for Monday, September 23, 2002 at 10:00 a.m.

The reasons for the rescheduling of the inspection from 3:00 p.m. on September 18 (Wednesday) until 10:00 a.m. September 23 (Monday) are set forth in Mr. Lee's September 18, 2002 email and seem to revolve around Mr. Lee's concerns that other members of these limited liability companies were being given freer access than he. Indeed, Mr. Lee indicated that he would take the matter up at the meeting of the LLCs scheduled for Friday, September 20, 2002. Indeed, Mr. Frank appeared as scheduled both on September 18th and September 23rd and Mr. Lee declined to undertake the inspection and review of the records which had been painstakingly and expensively collected for his review.

Under the circumstances, Mr. Lee's justification for additional expenses because he had to spend the weekend in Colorado is unwarranted and his request has been denied by the LLCs acting through their Operating Managers. Furthermore, Mr. Lee's request for expenses, including apparently, review of the "small court filings" by an attorney, are likewise not allowable by law.

Please inform Mr. Lee that if he persists in filing a small claims court action in whatever amount that this firm has been directed by the Operating Managers of both 2050 S. Havana St. And Komart to transfer said action to the County Court of Arapahoe County and/or to the District Court to be heard in connection with the proceedings and litigation presently

pending between 2050 S. Havana St. (DTSE), LLC, Komart, LLC and himself. Please recall that litigation includes, among other things, requests by Mr. Lee for reimbursement of expenses which he believes he was not paid.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BECK AND CASSINIS, P.C.

/s/

\_\_\_\_\_  
Howard J. Beck

HJB:brc

Enclosures

cc: Mr. John Jun, Operating Manager

Komart Korean & Japanese Supermarket, LLC

Mr. Gun Soo Youn, Operating Manager

2050 S. Havana St. (DTSE), LLC

Mr. Donald S. Kim

Attorney At Law

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**APPENDIX B-4**

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December 2, 2002

Howard Beck  
Beck and Cassinis  
Attorneys at Law  
Suite 200  
The Marketplace  
3025 South Parker Road  
Aurora, Colorado 80014

RE: 2050 S. Havana St. and Komart v. Stan J.H. Lee

Dear Mr. Beck:

In response to your letter to me of November 11, 2002, I have the following response:

Regarding the Transfer of Interest to Kang Shin Kim as Legal Custodian of Michelle S. Kim, and on behalf of the RTG-TPD Trust my clients desire to request a transfer of interest in accordance with the provisions of the Operating Agreement, as follows:

(1) A transfer of a 7% membership interest should be made to Kang Shin Kim as Legal Custodian of Michelle S. Kim.

(2) A transfer of a 3% membership interest should be made to Miyung Lee as Legal Custodian of Daniel Lee.

26a

In accordance with your letter to me of November 11, 2002, this request is being directed to your law firm on behalf of your client.

Should you have any questions at all with regard to this matter, please feel free, and do not hesitate to contact me.

Thanking you in advance for your anticipated cooperation and consideration in this matter, I remain,

Sincerely,

/s/

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David M. Fried

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**APPENDIX B-5**

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December 6, 2002

Mr. David M. Fried  
Attorney At Law  
140 East 19<sup>th</sup> Avenue, Third Floor  
Denver, CO 80203-1035

Re: 2050 S. Havana St. and Komart v. Stan J.H. Lee

Dear David:

This is in response to your letter of December 3, 2002, received December 4, 2002, in which you request on behalf of the RTG-TPD Trust one or more transfers of interest in accordance with the provisions of the Operating Agreement.

Unfortunately, your letter is not specific as to which legal entity from which you are requesting the approval of a transfer of interest. As you know, there are two separate limited liability companies: 2050 S. Havana St. (DTSE), LLC and Komart Korean & Japanese Supermarket, LLC. Please confirm in writing from which entity you are requesting approval of a transfer of interest.

Upon receipt of this further information, in writing, we will on behalf of our clients, the LLCs, forward the information you have provided to the affected Members as set forth in Article VII "General Restriction on Transfer of Interest" of the appropriate Operating Agreement(s).

Should you have any questions, please do not hesitate to contact me. Again, we will not take any further action until I have received written confirmation from you as to which of the entities the requested transfers concern.

Very truly yours,

BECK AND CASSINIS, P.C.

/s/ \_\_\_\_\_  
Howard J. Beck

HJB:brc

Enclosures

cc: Mr. John Jun, Operating Manager

Komart Korean & Japanese Supermarket, LLC

Mr. Gun Soo Youn, Operating Manager

2050 S. Havana St. (DTSE), LLC

Mr. Donald S. Kim

Attorney At Law

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**APPENDIX B-6**

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December 9, 2002

Komart Shopping Center  
2050 S. Havana St. LLC

Faxed to 303-369-2321

To: Mr. Gun Soo Youn  
General Manager

This cover letter including the 2-page copy of the letter from Beck and Cassini dated Dec 6, 2002 are being sent for your immediate action.

On the same letter, Mr. Beck is professing ignorance of which entity to issue the shares from (refer to the previous letter of instruction from me as to which shares to issue to whom and the corporate attorney has the copy of such information). I cannot believe he's acting in this manner at this juncture of time after the same has been on the agenda for so long.

To cut the case, you can contact the office of Beck and Cassini immediately and instruct them how the shares should be issues to (that is "the entity to issue the shares is the shopping center NOT the supermarket entity)



30a

I'd appreciated for your prompt action in this regard.

/s/

---

Stan J.H. Lee  
POA of RTG-TPD Trust

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**APPENDIX B-7**

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December 19, 2002

Mr. Richard S. Strauss  
Hochstadt, Straw, Strauss & Silverman, P.C.  
Attorneys At Law  
2043 York Street  
Denver, CO 80205

Re: Order to Transfer Property toward Satisfaction of  
Judgment  
Dated Dec. 16, 2002: Arapahoe County District  
Court; Case No. 01 CV 0222

Dear Richard:

Thank you for furnishing to me by email a copy of the above-referenced Order. I presume that you have likewise furnished a copy to Mr. David Fried, as counsel for Mr. Stan J.H. Lee, but in the event you have not had the opportunity to do so, I have.

As you are aware, this firm represents only the entities to which the Order is directed, 2050 S. Havana St. (DTSE), LLC, and Komart Korean & Japanese Supermarket, LLC. As I understand the Order it requires that the membership interest "if any" of Mr. Lee be transferred to the name of the Diane Katchen Trust and the Barney Katchen Trust. As we have also previously discussed, however, the 2002 Federal Tax Returns for each of the two LLC entities (2050 S. Havana St. and Komart Korean & Japanese Supermarket) do not list Stan

J.H. Lee as a Member. Based upon these returns and the other records of the LLCs, the LLCs do not recognize Mr. Lee personally holding or owning "any interest in either of the LLCs. I also note that you have obtained copies of those tax returns and other documents as part of our response to subpoenas you previously served upon the LLCs.

It is recognized that on behalf of the Katchen Trusts you allege that Stan J.H. Lee may have previously owned an interest in one or both of the LLCs. However, the tax returns in my possession commencing for 1999 never listed Mr. Lee personally. Prior to the year 2001 (1999 and 2000) for Komart Korean & Japanese Supermarket an interest is shown in the name of e.Komart.com, Inc." This is also true for 2050 S. Havana (DTSE) for the calendar years 1999 and 2000 which appears to be the first year of existence of both LLCs.

While I acknowledge your contention on behalf of the Katchen Trusts that e.Komart.com, Inc. is not now and never has been a legal entity and therefore only constituted a "d/b/a" for Mr. Stan J.H. Lee, the basis for such a contention is not known. As you are aware, Mr. Lee is a resident of New Jersey. Have your clients really had the opportunity to search all jurisdictions where e-Komart may be incorporated? Unfortunately, in the absence of a court finding of such a "d/b/a" status continuing until present, on behalf of the LLCs I cannot acknowledge Mr. Lee ever owned any interest in either. Furthermore, as indicated above, it is not controverted that for the calendar year 2001 (and presumably continuing unto the present) the RTG-TPD Trust is shown as the owner of the membership interest by the LLCs in tax returns executed and filed under the penalties of perjury.

Therefore, unless or until a court order is entered recognizing or finding that Mr. Stan J.H. Lee is in fact an

owner of any interest of either or both of the LLCs, it is impossible for me to recommend to our clients that they transfer any membership into the Katchen Trusts.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BECK AND CASSINIS, P.C.

/s/ \_\_\_\_\_  
Howard J. Beck

cc: Mr. Gun Soo Youn, Operating Manager  
2050 S. Havana St. (DTSE), LLC  
c/o Morgan's Market  
13 Hudson Street  
New York, NY 10013

Mr. Donald S. Kim  
Attorney At Law  
315 Fifth Avenue, 5<sup>th</sup> Floor  
New York, NY 10016

Mr. John Jun, Operating Manager  
Komart Korean & Japanese Supermarket, LLC  
c/o Advance Enterprise, Inc.  
205 Robin Road, Suite 210  
Paramus, NJ 07652

Mr. David M. Fried  
Attorney At Law  
140 East 19<sup>th</sup> Avenue, Third Floor  
Denver, CO 80203

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**APPENDIX B-8**

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December 19, 2002

Mr. John Jun  
32 Cardinale Lane  
Westwood, New Jersey 07675

BJAD Family Partnership  
Attention: Bock Soo Lee  
3 Paradise Drive  
Scarsdale, NJ 10583

Chang Mu Yi  
1322 South Lansing Court  
Aurora, Colorado 80012

Mr. Gun Soo Youn  
60 Princeton Street  
Closter, New Jersey 07624

DTSE Trust  
Attention: Gina Kim  
7884 Silverweed Way  
Lone Tree, Colorado 80124

RTG-TPD Trust  
Attention: Miung Lee  
335 Continental Avenue  
River Edge, New Jersey 07661

re: 2050 S. Havana St. (DTSE), LLC

To the Members of 2050 S. Havana St. (DTSE), LLC, a Colorado limited liability company:

As each of you is aware, this law firm represents 2050 S. Havana St. (DTSE), LLC. The RTG-TPD Trust has requested that it be allowed to transfer certain interests in 2050 S. Havana St. (DTSE), LLC, as follows:

1. A transfer of a 7% membership interest to Kang Shin Kim, as Legal Custodian of Michele S. Kim; and
2. A transfer of a 3% membership interest to Miyung Lee, as Legal Custodian of Daniel Lee.

Article VII of the Operating Agreement of 2050 S. Havana St. (DTSE), LLC, provides as follows:

#### Article VII

##### General Restriction on Transfer of Interest

**Section 1. General Restriction on Transfer of Interest:** Except as hereinafter provided in this Agreement, no Member shall transfer by sale, gift, bequest or otherwise, or encumber by pledge, assignment, mortgage, charge or otherwise, or otherwise dispose of or cease to be the holder of any of the Interest in the Corporation of which it is at any time the registered or beneficial owner, without the prior written consent of the other Members. In the case of any permitted transfer, no Member shall sell any of its Interest in the Corporation unless the purchaser is already or becomes a party to this Agreement upon completion of the applicable sale.

Please advise, in writing, whether you consent or do not consent to the requested transfer of interests in 2050 S. Havana St. (DTSE), LLC, by the RTG-TPD Trust as set forth above by indicating your decision on the attached document and returning it to this office in the self-addressed, stamped envelope enclosed for your convenience.

Also enclosed is a copy of an Order dated December 16, 2002, from the Arapahoe County District Court. The requested transfer may be subject to any claims and rights, if any, arising out of the Order.

Due to the fact that this law firm represents 2050 S. Havana St. (DTSE), LLC, and does not represent any of the individual members, you should each consult your own legal counsel regarding this matter. Upon receipt of the attached document indicating your decision, this law firm will make copies of the same and forward copies to each member.

Sincerely,

BECK AND CASSINIS, P.C.

/s/ \_\_\_\_\_  
Kenneth J. Frank



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**APPENDIX B-9**

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December 20, 2002

2050 S. Havana St. (DTSE), LLC  
Komart Korean & Japanese Supermarket, LLC  
c/o Howard J. Beck, Esq.  
Beck & Casinis PC  
3025 S. Parker Road, Suite 200  
Aurora, Colorado 80014

Re: The Diane Katchen Trust  
and the Barney Katchen Trust  
V. K-Rodeo Promenade, LLC, *et al.*

Dear Mr. Beck:

Please be advised that by virtue of an Order of the District Court in and for Arapahoe County, Colorado, Case No. 01CV02222, Division 4, the respective interests of Stan J.H. Lee in and to 2050 So. Havana St. (DTSE), LLC and Komart Korean & Japanese Supermarket, LLC (The "LLC's") have been transferred to the Diane Katchen Trust and the Barney Katchen Trust toward satisfaction of said Trusts' judgment against Stan J.H. Lee. Stan J.H. Lee is the owner of said units by virtue of the fact that Mr. Lee's units were issued to him for services rendered; the units were put in the name of RTG-TPD Trust, but there is not record in the State of Colorado or elsewhere of the legal existence of said Trust or that the transfer, if any, to said Trust was for legal consideration.

Pursuant to Article XIII of the respective Operating Agreements of the LLC's, any member may, at any time, after ninety days, during the term of the agreement, send a notice in writing to the "Corporation" (sic) and to the other members which shall be signed by the Selling Party and shall be notice of the Selling Party's intention to Sell all or a position of the interest in the "Corporation" owned by the Selling Party.

Pursuant to said provision, please be advised that the Diane Katchen Trust and the Barney Katchen Trust intent to sell the following interests in and to the respective LLC's which were formerly owned legally and/or equitably by Stan J.H. Lee:

15% LLC interest in and to 2050 S. Havana St.  
(DTSE), LLC

and

17.5% LLC interest in and to Komart Korean &  
Japanese Supermarket, LLC

Pursuant to the respective Operating Agreements, the members are required to meet within 10 days following receipt of this notice and agree on a value for the interest. If there is no agreement, the Operating Agreements set forth an appraisal process. The Operating Agreements further provide that payment shall be over a two-year period.

Please be advised that at present, the principal amount of the judgment owing to the Katchen Trust is \$94,432.30. Interest thereon from the date of Judgment (October 31 2001 at 18% per annum) is \$19,279.71. Attorney fees are in the amount of \$37,904.

Therefore, the total owing on the Judgment is \$151,616.01. The Katchen Trusts would agree to sell the LLC interests for the total sum of \$151,616.01, if the offer is accepted by January 3 and paid by January 31, 2003, with interest and attorney fees accruing to the date of closing. If not so accepted, then the we will insist that the valuation of the interests process must be instituted.

Please advise at your earliest convenience.

Very Truly Yours,

Hochstadt, Straw, Straus  
& Silverman, P.C.

/s/

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Richard S. Strauss

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**APPENDIX B-10**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

**[Filed May 22, 2003]**

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THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)

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**ORDER ADDING PARTY**

**THIS MATTER COMING ON TO BE HEARD Upon  
Plaintiffs' Motion to Add Additional Party, the Court, being  
fully advised in the premises, DOTH ORDER that said**

41a

Motion should be and hereby is GRANTED, and that RTG-TPD TRUST is hereby added as an additional party hereto for purposes of determining Plaintiffs' Traverse of Answers to Writs of Garnishment.

DONE AND SIGNED in Open Court this 16<sup>th</sup> day of May, 2003.

BY THE COURT:

/s/ \_\_\_\_\_  
DISTRICT COURT JUDGE

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**APPENDIX C-1**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

---

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)
	)

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**HEARING BRIEF REGARDING  
REVOCABILITY OF THE TRUST AND THE  
RULE AGAINST PERPETUITIES**

PLAINTIFFS, by and through their attorneys,  
HOCHSTADT, STRAW, STRAUSS & SILVERMAN, P.C.,  
hereby submit the following Brief concerning the revocability  
of the "Irrevocable Trust" at issue in this matter, as well as

the Rule Against Perpetuities and whether or not the "Irrevocable Trust" violates said Rule.

The within proceeding concerns a Traverse of Answers to Writs of Garnishment filed by the Plaintiffs. Plaintiffs served Writs of Garnishment on two Limited Liability Companies: 2050 So. Havana St. (DTSE), LLC: and Komart Korean and Japanese Supermarket, LLC ("the LLC's"), claiming that the LLC's were holding money or property belonging to Stan J.H. Lee, the judgment debtor. The LLC's denied that they were holding any money or property of Mr. Lee, because the LLC interests which Plaintiffs attributed to Mr. Lee were titled in the name of "RTG-TPD Trust," a trust established by Mr. Lee in May, 1999. The trust agreement for the Trust is styled "Irrevocable Trust," and a copy thereof is attached hereto as Exhibit A.

It is Plaintiffs' position that (a) even though the trust is styled as "irrevocable," it is in fact revocable by the Settlor/Trustee and is therefore subject to the claims of the Settlor's creditors; and (b) the Trust violates the Rule Against Perpetuities, and is, therefore, a nullity.

#### A. REVOCABILITY OF THE TRUST

The Trust is denominated as an irrevocable trust. However, Article XXI(B) of Exhibit A provides as follows:

"The trustee may alter, amend or terminate this Declaration with the consent of a majority of the beneficiaries except that no alteration may be made which shall extend the time of the Trust beyond the term hereinbefore fixed."



The reason why this provision makes the trust revocable is because Stan Lee was and is the Settlor and the Trustee. Therefore, Stan Lee retained the power to terminate the trust.

It is believed that Mr. Lee or the Trust will argue that Mr. Lee resigned as Trustee and that his wife succeeded him in said capacity. However, Exhibit A is very specific that in order for a Trustee to resign, it must be by written instrument signed, acknowledged and recorded. Article III and XX of the "Irrevocable Trust." Under New Jersey law, if the Trust specifies a manner of modification or revocation, that manner must be followed or else the modification is ineffective. See *Estate of Henning*, 116 N.J. Super. 491, 282 A.2d 786 (1971); *Matter of Kovalyshyn's Estate*, 343 A.2d 852 (N.J.Co. 1975). There is no acknowledged or recorded document or instrument by which Mr. Lee resigned or Mrs. Lee was appointed to succeed him.

Accordingly, Stan Lee, in whatever capacity, retained the power to modify or revoke the trust at the time that he created the trust.

Interestingly, as will be discussed more fully below, if the Trustee were to terminate the trust, title would not necessarily vest in the beneficiaries. There is a provision which states that "upon *determination* of this Trust, the Trust 'res', after payment of all outstanding obligations or liabilities. . .shall be turned over to the beneficiaries as tenants in common." (Emphasis added). (Exhibit A. Article XIX). It is unknown what "determination of the trust" means. However, another provision of Exhibit B states unequivocally that

"No title, interest or estate in any lands, buildings or other property held by the Trustee at any time hereunder is to vest in the beneficiaries, the interest of

the beneficiaries being equitable; the beneficiaries shall have no right to call for any partition or distribution during the continuance of the Trust; and the sole right, claim and interest of the beneficiaries shall be in the obligation of the Trustee hereunder to hold, manage, apply and dispose of the Trust 'res' and account for the income and proceeds thereof in the manner provided for herein."

There is no express provision in the Trust Agreement providing that title will vest in the beneficiaries when the Trust is terminated, unless the Court rewrites the Irrevocable Trust to change the word "determination" to "termination."

Therefore, if the Trustee were to terminate the trust, it is submitted that title would necessarily revert to the Settlor because there is no direction in the trust as to where the assets would go if the trust were terminated.

The law in Colorado is that because Stan Lee retained the right to revoke the trust, the assets of the Trust, if any, are reachable by his creditors, regardless of the presence or absence of fraudulent intent. See, *In re Marriage of Flohr*, 672 1024 (Colo.App. 1983) (concerning revocable savings account trusts). See also, Restatement of the Law of Trusts 2d, §25 and comments thereto, which provides as follows:

"1) A trust that is created by the settlor's declaration of trust, or by inter vivos transfer to another, or by beneficiary, designation or other payment under a life-insurance policy, employee-benefit or retirement arrangement, or other contract is not rendered testamentary, merely because the settlor retains extensive rights such as a beneficial interest for life, powers to revoke and modify the trust, and the right

to serve as or control the trustee, or because the trust is funded in whole or in part or comes into existence at or after the death of the settlor, or because the trust is intended to serve as a substitute for a will.

(2) A trust that is not testamentary is not subject to the formal requirements of § 17 or to procedures for the administration of a decedent's estate; nevertheless, a trust is ordinarily subject to substantive restrictions on testation and to rules of construction and other rules applicable to testamentary dispositions, *and in other respects the property of such a trust is ordinarily treated as though it were owned by the settlor.*" (Emphasis added).

Therefore, since the trust is revocable, the assets of the trust are reachable by the creditors of the Senior.

## B. RULE AGAINST PERPETUITIES

The Trust provides that the interests of the beneficiaries are purely equitable, and that title to the assets will never vest in the beneficiaries.

It may be argued by the Trust that this provision, contained in Article XV of the Trust, only applies while the Trust is in effect and that after the trust is terminated, title vests in the beneficiaries as tenants in common. However, there is no provision of the Irrevocable Trust which so provides. As discussed above, there is a provision in Article XX that upon "determination" of the Trust title vests in the beneficiaries as tenants in common, but "determination" is not "termination."

Even giving the Trust the benefit of the doubt that the use of the word "determination" is a typographical error, this still would not save the Trust under the Rule Against Perpetuities. As an aside, it is noted that this trust was created in New Jersey, and would be governed by New Jersey law, but the Rule Against Perpetuities is applicable to trusts created in New Jersey. See, *In re Birkner's Estate*, 216 A.2d 258 (N.J. Co. 1966). That case held as follows:

"The rule against perpetuities, as stated by Professor Gray in *The Rule Against Perpetuities* (4th ed.) 191, and quoted in *Wright v. Renehan*, 10 N.J. Super. 363, 367, 76 A.2d 705, 707 (Ch.1950), is stated as follows:

'No interest is good unless it must vest, if at all, not later than twenty- one years after some life in being at the creation of the interest.'

"In *McGill v. Trust Company of New Jersey*, 94 N.J. Eq. 657, 664, 121 A. 760 (Ch.1923), modified 96 N.J. Eq. 331, 125 A. 108 (E. & A. 1924), the court amplified and explained the rule in the following language:

'That rule requires that all future interests, legal or equitable, in realty (except dower and curtesy and rights of entry for conditions broken) or personalty, which are contingent and indestructible, must be such as necessarily to vest, if at all, within the term measured by the life or lives of a person or persons in being at the time of the creation of the interest and twenty-one years thereafter; otherwise they are invalid and void (at p. 664, 121 A. at p. 764)'."

A copy of the New Jersey case law cited herein is attached hereto for the Court's convenience.

In the present case, the interests of the beneficiaries do not necessarily vest at any time. The interests *could* vest if the word "determination" is interpreted to mean "termination," and if the Trustee were to terminate the trust during the named beneficiaries' lifetimes. However, if "determination" means "termination," the interests of the beneficiaries will not necessarily vest until the trust terminates by its own terms, which, as stated in Article II of the "Irrevocable Trust," will not occur until "twenty-one (21) years after the death of the survivor of any person name [sic] herein."

In other words, the interests of the beneficiaries will not of necessity vest until twenty-one years after the last survivor of the beneficiaries dies. The only named beneficiaries are Miyung Lee and Daniel Lee (Article XII of Exhibit A). There is no provision in the trust for an alternate or successor beneficiary. Therefore, at the time that the trust terminates under its own terms, the named beneficiaries will have been dead for 21 years. Accordingly, the interests of the beneficiaries will not vest, if at all, within their lifetime or within 21 years thereafter. Again, there is no provision in the Trust for distribution to any person upon the termination of the Trust.

In other words, the Trust is void under the Rule Against Perpetuities. Assuming that the LLC interests ever were transferred to the Trust to begin with (there is no recorded document or instrument transferring the LLC interests to the Trust as required by the Irrevocable Trust), the Trust cannot shield those assets against the claims of the creditors of the Settlor, because a transfer to a void trust is void. See, *Smith's Estate v. Commissioner*, 140 F.2d 759 (3<sup>rd</sup> Cir. 1944).

WHEREFORE, Plaintiffs pray that the Court find that the Trust was revocable and therefore the assets held by the Trust, if any, are reachable by creditors of the Settlor; and that the Trust violates the Rule Against Perpetuities and any transfer of assets to the Trust is void.

HÖCHSTADT, STRAW, STRAUSS & SILVERMAN. P.C.

By: /s/ \_\_\_\_\_  
Richard S. Strauss, No. 7916  
2043 York Street  
Denver, CO 80205  
(303) 329-9222  
(303) 333-7127 Fax

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on July 15, 2003, I served the above and foregoing by e-filing with Lexis/Nexis File and Serve, addressed to:

Howard Beck, Esq.  
BECK AND CASSINIS, P.C.  
3025 S. Parker Road, Suite 200  
Aurora, Colorado 80014

David M. Fried, Esq.  
303 E. 17<sup>th</sup> Avenue, Suite 700  
Denver, CO 80203

Dr. Kishan K. Khanna, Esq.  
3515 S. Tamarac St., Suite 200  
Denver, CO 80237  
VIA FAX TO 303-824-8803

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**APPENDIX C-2**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

---

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)

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**SUPPLEMENTAL HEARING BRIEF**

PLAINTIFFS, by and through their attorneys, HOCHSTADT, STRAW, STRAUSS & SILVERMAN, P.C., hereby submit the following Supplemental Hearing Brief concerning the question of whether or not, if the interests of the beneficiaries under the subject RTG-TPD Trust are invalid



due to the Rule Against Perpetuities, the Trust itself is void *ab initio*.

Plaintiffs have argued in this proceeding that the interests of the beneficiaries of the "Irrevocable Trust" for the RTG-TPD Trust which is at issue in this matter are void because of the Rule Against Perpetuities. The question was posed during the hearing which occurred on July 21, 2003 whether, assuming that the interests are void, the Trust itself is void *ab initio*.

It is submitted that the answer to the above question is that the Trust is not void *ab initio* - it simply is not a Trust, and therefore, the conveyance or transfer of property by Stan Lee, as Settlor, to himself as Trustee did not create a trust.

Under the holding in *Matter of Estate of Granberry*, 30 Colo.App. 590, 596; 498 P.2d 960, 963 (1972), there are six elements necessary for the creation of a trust:

"(1) the Settlor's capacity to create a trust; (2) his intention to create a trust; (3) a declaration of trust or a present disposition of the res; (4) an identifiable trust res; (5) a trustee; and (6) *identifiable beneficiaries*. Restatement (Second) of Trusts, § 17, et seq.; G. Bogert, Trusts and Trustees, §41, et seq. (2d ed.)" (Emphasis added).

The present trust has named beneficiaries but the interests of those beneficiaries is void because the interests will not necessarily vest within the period of the Rule Against Perpetuities. If the interests of the named beneficiaries, Miyung Lee and Daniel Lee, are void, and because there are no other named beneficiaries or classes of beneficiaries, then there are no identifiable beneficiaries named in the

"Irrevocable Trust." Hence, one of the six required elements for the formation of a trust is lacking, and the RTG-TPD Trust was never formed.

*Ohio & Colorado Smelting & Refining Co. v. Barr* 144 P. 552 (Colo. 1914) is for a different legal principle, but is nonetheless instructive. There, the Court held that if the trust has no identifiable beneficiaries, then if the Statute of Uses were to operate to vest legal title in the beneficiaries the following would occur:

"If under a conveyance in which the beneficiary or usee is not named, but is absolutely unknown and unascertained, the statute can be said to take the legal title out of the trustee, the effect could only be to suspend it in the air, and no such absurd result could ever have been in contemplation."

Stated another way, in a trust, the legal title is vested with the Trustee, and the equitable title is with the beneficiaries. When the trust property is distributed out according to its terms, the legal title is transferred to the beneficiaries and there is a merger of the legal and equitable titles which causes the trust to terminate.

In the present case, where there is no ascertainable beneficiary, because the interests of the named beneficiaries are void under the Rule Against Perpetuities, there is no named or ascertainable person who holds the equitable title. Accordingly, a merger of the legal and equitable titles occurs IN THE TRUSTEE at the time of the conveyance or transfer, and the Trust never came into existence. Hence, Stan Lee, as Settlor, transferred property to himself, as Trustee, but since the legal and equitable titles merged upon the transfer, the

transfer was ineffectual to create a trust and the property remained Stan Lee's own property.

Accordingly, Stan Lee has been the legal and equitable owner of the interests in the LLC's at all pertinent times hereto, and said LLC interests have now become the property of the Plaintiffs.

Respectfully submitted,

HOCHSTADT, STRAW, STRAUSS  
& SILVERMAN, P.C.

By: \_\_\_\_\_

Richard S. Strauss, No. 7916  
2043 York Street  
Denver, CO 80205  
(303) 329-9222  
(303) 333-7127 Fax

#### **CERTIFICATE OF SERVICE**

I DO HEREBY CERTIFY that I have served the above and foregoing Supplemental Hearing Brief by delivering the same electronically to Lexis/Nexis File and Serve on July 23, 2003.

\_\_\_\_\_

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**APPENDIX C-3**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV0222  
Div. 206**

**[October 3, 2003]**

<b>THE DIANE KATCHEN TRUST</b>	)
<b>and the BARNEY KATCHEN TRUST</b>	)
<b>Plaintiffs</b>	)
	)
<b>v.</b>	)
	)
<b>K-RODEO PROMENADE,</b>	)
<b>a Colorado Limited Liability Company;</b>	)
<b>STAN LEE, individually, and</b>	)
<b>eKOMART.COM, INC., A Colorado corp.</b>	)
<b>Defendants</b>	)
	)

**TRANSCRIPT OF PROCEEDINGS  
BEFORE JUDGE J. MARK HANNEN  
FINDINGS, CONCLUSIONS, AND ORDERS**

[p.2]

*WHEREUPON, the following proceedings are had and entered of record on Friday, October 3, 2003:*

(The hearing was conducted by telephone.)

THE COURT: Good morning, everyone.

I'm going to go ahead and call the case. I have a couple of housekeeping matters before I announce findings and conclusions.

This is Case 01CV0222, Diane Katchen Trust and Barney Katchen Trust versus K-Rodeo Promenade, Stan Lee, and eKomart.com, Incorporated. Would Counsel enter your appearances, please?

MR. STRAUSS: Richard S. Strauss, 7916, representing the plaintiffs. And one of the plaintiffs is on the line as well.

DR. KHANNA: I'm Kishan Khanna. I'm representing The RTG-TPD Trust and Mr. Stan Lee, the defendant.

MR. FRIED: David Fried, 19238, on behalf of Stan Lee.

MR. BECK: Howard Beck, appearing on behalf of 2050 South Havana Street (DTSE), LLC, and the Komart Korean and Japanese Supermarket, LLC.

THE COURT: Good morning to everyone on the line. I first wanted to address two things. I was looking at the exhibits that the Court has at this point [p.3] and I don't have Exhibit D-1 and D-4, which were admitted at the hearing on July 21st. My note indicates that these were attached to

plaintiffs' reply to the partial response of Ms. Lee. Mr. Strauss, do you recall where those are? They may have been pulled out yesterday when the parties were trying to get the exhibits organized.

MR. STRAUSS: Your Honor, the last I saw them, they were in that stack, but I don't know where they are.

THE COURT: All right. Dr. Khanna, do you happen to have D-1 and D-4?

DR. KHANNA: Yes, sir. I think we saw them yesterday, and in fact, Your Honor acknowledge they are there. They are with me right now, but these are the returns, 1040 tax, Your Honor.

THE COURT: So you have D-1 and D-4?

DR. KHANNA: Yeah, all of them; D-1, D-2, D-4.

THE COURT: D-1 and D-4 need to be in the court file. Could you forward those to the Court by mail?

DR. KHANNA: Yes, Your Honor.

THE COURT: If you could do that.

DR. KHANNA: D-1 and D-4 will be fine.

THE COURT: All we need is D-1 and D-4.

DR. KHANNA: Yes.

THE COURT: I checked the other exhibits and all of those that are admitted are in the Court's file.

[p.4]

Mr. Strauss, I have copies that you kindly furnished to me earlier of your Hearing Brief Regarding Revocability of the Trust and the Rule Against Perpetuities, and your Reply to Partial Response of Miyung Lee, Trustee RTG-TPD Trust and Motion to Strike. I think these were from your files because the court copies were not in the file. I now have those in the court file. If you would like them back, we can send them back to you.

MR. STRAUSS: It's not necessary. I have copies.

THE COURT: Well, with that concluded, the Court is ready to go ahead with the purpose of today's telephone conference. This matter came on for a hearing on July 21st, 2003. The hearing was continued to August 21st, 2003, and then continued and concluded on October 2nd, 2003.

The plaintiffs were represented by Richard S. Strauss.

The garnishees, 2050 South Havana Street (DTSE), LLC, and Komart Korean and Japanese Supermarket, LLC, were represented by Howard J. Beck.

Stan Lee was represented by David M. Fried.

And Miyung Lee, Trustee of the RTG-TPD Trust, and Stan Lee were represented by Dr. Kishan K. Khanna.

The Court has heard the testimony of the [p.5] witnesses and has had an opportunity to assess their demeanor and credibility. The Court has also carefully reviewed the documents admitted into evidence and the legal briefs submitted by the plaintiffs and by the Trust. The Court would

like to thank Counsel for their thorough preparation and presentation of this case. Counsels' efforts were of great assistance to the Court in reaching the conclusions that it has reached and in making its findings.

This matter came before the Court for a hearing on the plaintiffs' traverse to the answers to writs of garnishment issued February 3rd, 2003, and served on 2050 South Havana Street (DTSE), LLC, and Komart Korean and Japanese Supermarket, LLC. The answers stated that the garnishees did not owe any monies or other personal property to Stan Lee.

Plaintiffs have asserted that the garnishees are holding monies for distribution to Stan Lee as owner of membership interests in the garnishees. Plaintiffs request that this Court order that the money held by the garnishees be paid over to plaintiffs as judgment creditors of Stan Lee.

The RTG-TPD Trust asserts that it owns membership interests in both limited liability companies and it is entitled to distributions from the limited [p.6] liability companies free of any claims of the creditors of Stan Lee.

The document that created the RTG-TPD Trust is dated May 18th, 1999. The settlor is Stan J.H. Lee. The trustee is also Stan J.H. Lee. Mr. Lee's signature as trustee is dated October 30, 2001. See Plaintiffs' Exhibit 3.

The trust document lists the assets transferred to the trust. Membership interests in 2050 South Havana Street (DTSE), LLC, and Denve California Market, LLC, d/b/a Komart Korean and Japanese Supermarket, LLC, are not listed among the assets transferred to the trust.



The operating agreement for 2050 South Havana Street (DTSE), LLC, dated March 1, 1999, Exhibit 6, is not signed by the trust and does not mention the trust.

The operating agreement for Denver California Market, LLC, d/b/a Komart Korean and Japanese supermarket, LLC, dated March 1st, 1999, Exhibit 7, is not signed by the trust and does not mention the trust.

The 1999 U.S. partnership return of income for 2050 South Havana Street, (DTSE), LLC, Exhibit 8, does not indicate that the RTG-TPD Trust was a member of this limited liability company in 1999. No Schedule K-1 was prepared for it.

Similarly, the 1999 U.S. partnership return of [p.7] income for Komart Korean and Japanese Supermarket, LLC, Exhibit 11, does not indicate that the RTG-TPD Trust was a member of this limited liability company in 1999. No Schedule K-1 was prepared for it.

Also, the 2000 U.S. return of partnership income for 2050 South Havana Street (DTSE), LLC, Exhibit 9, does not indicate that the RTG-TPD Trust was a member of this limited liability company in the year 2000. Again, no Schedule K-1 was prepared for this trust.

In addition, the year 2000 Form 106 for a Colorado partnership filed by Komart Korean and Japanese Supermarket, LLC, does not list the RTG-TPD Trust as one of the members of this limited liability company, Exhibit 12.

Plaintiffs obtained a Judgment against Stan Lee on August 7, 2001. An amended Judgment was entered on October 31st, 2001.

The 2001 return of partnership income dated April 22nd, 2002, for Komart Korean and Japanese Supermarket, LLC, contains a Schedule K-1 for RTG-TPD Trust indicating the trust had a 17.65 percent interest in the limited liability company.

No credible evidence has been introduced showing that membership interests in the limited liability companies were assigned or otherwise transferred at any [p.8] time to the RTG-TPD Trust.

No evidence has been introduced showing that any consideration was given for the transfer of any membership interests in the limited liability companies to the trust. The trust's assertion that it is the owner of membership interests in the limited liability companies is not supported by credible evidence.

Instead, the evidence indicates Stan Lee received interests in the limited liability companies in consideration for his services rendered on behalf of those limited liability companies.

In paragraph 46 of his counterclaim in the case of 2050 South Havana (DTSE), LLC, versus Lee, Case No. 02CV384, Arapahoe County District Court, Stan Lee admits that the operating agreement for 2050 South Havana Street (DTSE), LLC, provided for him to serve as project manager for the Denver project and to receive a percentage interest in the shopping mall, supermarket, and restaurant. The Court finds that Stan Lee did indeed receive an ownership interest in 2050 South Havana (DTSE), LLC, and in the Komart Korean and Japanese Supermarket, LLC. That interest has never been transferred to the RTG-TPD Trust. Mr. Lee owns a 15 percent interest in 2050 South [p.9] Havana Street, LLC,

that is the Komart Mall, and a 17.65 percent interest in Komart Korean and Japanese Supermarket, LLC.

The RTG-TPD Trust did not file income tax returns for the years 1999, 2000, 2001, and 2002, until April 2003. See Trust Exhibits M-1, M-2, M-3, and M-4. In April of 2003, Mr. Lee also attempted to file amended income tax returns for 2050 South Havana Street (DTSE), LLC, and Komart Korean and Japanese Supermarket, LLC, for the years 1999 and 2000, even though he was no longer operating manager of those limited liability companies. See Trust Exhibits I-1, I-2, I-3, and I-4. These unsigned amended returns have handwritten Schedule K-1s for the RTG-TPD Trust, where all of the other parts of these returns are typewritten.

—The plaintiffs have sustained their burden of proving that Stan Lee is the owner of membership interests in 2050 South Havana Street (DTSE), LLC, and in Komart Korean and Japanese Supermarket, LLC.

Because of the findings that the Court has made and the conclusions that it has reached, the Court need not address plaintiffs' argument that RTG-TPD Trust is a revocable trust and hence subject to the liens of Mr. Lee's creditors.

Likewise, the Court need not address the [p.10] plaintiffs' argument that the trust is invalid as violative of the rule against perpetuities. Because Stan Lee is the owner of a 15 percent interest in 2050 South Havana Street, (DTSE), LLC, and a 17.65 percent interest (in Komart Korean and Japanese Supermarket, LLC, any distributions payable by those limited liability companies as a result of those ownership interests must be paid to plaintiffs as Mr. Lee's judgment creditors. Such payments are to be made at the address designated by the plaintiffs in writing.

The motion of Komart Korean and Japanese Supermarket, LLC, and 2050 South Havana Street (DTSE), LLC, to interplead funds entered February 13, 2003, is granted.

The motion of 2050 South Havana Street (DTSE), LLC, to interplead additional funds filed with the Court on September 18, 2003, is granted.

That concludes the Court's findings and conclusions in this matter. Mr. Strauss, would you kindly reduce the Court's findings and conclusions to writing, using the procedure specified in Rule 21, Section 1-16?

MR. STRAUSS: I will, Your Honor. I would only request if perhaps I can order a transcript.

THE COURT: Yes, Ms. Hartmetz is here in the courtroom. She has been making stenographic notes of what [p.11] the Court has said, so I will ask her to prepare a transcript so that you can reduce the Court's findings and conclusions and order to writing.

MR. STRAUSS: I will be happy to, Your Honor. I have one other request, if we could have an order for the release of the funds that Mr. Beck's clients have already paid into the Court's registry.

THE COURT: Yes, that is the import of the Court's orders this morning, and any funds that are currently in the court registry are ordered transferred to the plaintiffs.

MR. STRAUSS: Thanks you.

DR. KHANNA: Your Honor.

THE COURT: Yes, Dr. Khanna.

DR. KHANNA: Your Honor, the point is this, that it is only the money which the Court has ordered to be paid to the plaintiffs and they are in the name of Stan J.H. Lee because the shares are not to be transferred to the RTG-TPD Trust. By this Judgment, the Court has ordered that these shares actually belong to Stan J.H. Lee and he is the owner of this interest.

THE COURT: Dr. Khanna, the Court has previously ordered that Mr. Lee's interest in these limited liability companies, if any -- and the Court has determined, in fact, that he does have interests -- be transferred to the [p.12] plaintiffs in satisfaction of their judgments. So today the Court determines that Mr. Lee, in fact, is and was the owner of these interests in the limited liability companies, but pursuant to prior court order, those interests are transferred to the plaintiffs in at least partial satisfaction of their judgments.

DR. KHANNA: Yes, that is exactly the point; not the whole interest for the 94,000. This is what I'm saying.

THE COURT: If Mr. Lee has any objections or concerns related to that prior court order, you may file a motion related to that and the Court is not addressing that order today, but is determining that the trust is not the owner of the interests that have been the subject of this hearing.

DR. KHANNA: Yes, because Stan Lee, this is what I'm saying.

THE COURT: Anything further?

DR. KHANNA: No, Your Honor.

THE COURT: Mr. Fried, anything further?

MR. FRIED: No, Your Honor.

THE COURT: Mr. Beck.

MR. BECK: No, sir.

THE COURT: Mr. Stauss.

MR. STRAUSS: Richard Strauss. Can I have ten [p.13] days from when I get the transcript to submit the orders?

THE COURT: In fact, why don't I allow 30 days for you to do this. That will give enough time for Ms. Hartmetz to prepare the transcript and mail it to you.

MR. STRAUSS: Does she need any kind of deposit?

THE COURT: She will give you a call on that.

MR. STRAUSS: Okay. Very good.

MR. FRIED: This is Dave Fried again. I have a point of clarification. I'm curious -- everybody on the line wants to know, if the Court is willing on this issue -- the Court basically is indicating that Mr. Lee is the owner of the shares and that those interests are being transferred from Mr. Strauss to his client in satisfaction of Mr. Strauss' judgment; is that correct?

THE COURT: The prior court order -- and I can get it if I need to -- but as I recall, upon plaintiffs' request, it transferred the interest of Mr. Lee, if any, in these limited liability companies to the plaintiffs.

MR. FRIED: Is the Court making any ruling or findings on Mr. Lee's, if you will, remainder interest in the value of these interests once they, once Mr. Strauss has been paid? In other words, should there be hypothetically a value attached in excess of Mr. Strauss' judgment? Is the Court making any findings whether Mr. Lee maintains left-over judgment after the payment of [p.14] Mr. Strauss' Judgment?

THE COURT: No, that is not before the Court.

MR. FRIED: I wanted to make sure.

THE COURT: We do have the situation where Judge Sylvester last year entered a transfer order, but it was based on the proposition what was being transferred was any interest in these entities that Mr. Lee might have. But the Court at that time had not determined whether he had any interest. Now, the Court makes that determination, but the issue you raise has not yet been addressed by the Court.

MR. FRIED: All right. That was all I had. I just wanted to make sure. I know that very question is going to come up.

THE COURT: Yes, and I've anticipated that that may become an issue, but neither this ruling nor Judge Sylvester's prior ruling addressed that.

MR. FRIED: That is fine. That is all I had, Your Honor.

MR. STRAUSS: Thank you.

MR. BECK: Thank you, Your Honor.

DR. KHANHA: Thank you, Your Honor.



**THE COURT:** Thank you to everyone and have a good day.

(The hearing was concluded.)

[p.15]

### REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARAPAHOE )

I, VICKI WILCOX HARTMETZ, Official Court Reporter for Division 206, 18th Judicial District Court, within the County of Arapahoe, State of Colorado, and a Registered Professional Reporter and Certified Shorthand Reporter, do hereby certify that I reported the above proceedings in machine shorthand on Friday, October 3, 2003, and that the foregoing transcript, pages 1 through 15 inclusive, is true and correct to the best of my knowledge and ability. IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of October, 2003.

/ s /

**VICKI WILCOX HARTMETZ**  
RPR, CSR, CMRS, CLVS, CRI, CPE



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**APPENDIX C-4**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222**

**Div.: 4**

**[Filed January 9, 2003]**

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THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually, and	)
eKOMART.COM, INC., A Colorado corp.	)
Defendants	)

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**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT**

**THIS MATTER CAME ON TO BE HEARD for a hearing on the Plaintiffs' traverse to the Answers to Writs of Garnishment issued February 3, 2003, and served on 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese**

Supermarket, LLC. The answers stated that the garnishees did not owe any monies or other personal property to Defendant Stan Lee. Plaintiffs have asserted that the garnishees are holding monies for distribution to Stan Lee as owner of membership interests in the garnishees. Plaintiffs request that this Court order that the money held by garnishees be paid over to Plaintiffs as judgment Creditors of Stan Lee.

RTG-TPD Trust ("The Trust") asserts that it owns membership interests in both limited liability companies and it is entitled to distribution from the garnishees free of any claims of the creditors of Stan Lee.

Hearings were held on July 21, 2003; August 21, 2003 and October 2, 2003. Plaintiffs appeared in person at the hearings on July 21, 2003 and August 21, 2003, and were represented at all said hearings by Richard S. Strauss, of the law firm of Hochstadt, Straw, Strauss & Silverman, P.C.; Defendant Stan J.H. Lee appeared in person at said hearings and was represented by David Fried, Esq. At the hearings on July 21, 2003 and August 21, 2003, and by David Fried and Kishan Khanna, Esq. at the hearing on October 2, 2003; Garnishees 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC were represented at said hearings by Howard Beck, Esq. of the firm Beck & Casinis, P.C.; and Miyung Lee, Trustee of the RTG-TPD Trust appeared in person at the hearings on July 21, 2003 and August 21, 2003 and was represented at all three hearings by Kishan Khanna, Esq.

THE COURT, having heard the testimony of and having had the opportunity to observe the demeanor and credibility of the witnesses, having reviewed the documents admitted into evidence and the legal briefs submitted by the Plaintiffs and

the Trust, having heard the statements and arguments of counsel and being fully advised in the premises, DOTH MAKE THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER:

### I. FINDINGS OF FACT

1. The evidence before the Court established that the Trust was established by a written Irrevocable Trust agreement dated May 18, 1999. (Exhibit 3) Stan Lee was both the Settlor of the Trust and the Trustee. The signature of Stan Lee, as Trustee, is dated October 30, 2001.

2. The Trust document (Exhibit 3) lists the assets and property which were transferred to the Trust. Membership interests in 2050 S. Havana St. (DTSE), LLC and Denver California Market, LLC d/b/a Komart Korean and Japanese Supermarket, LLC (Hereinafter referred to as the "limited liability companies") are not listed among the assets transferred to the trust.

3. The 1999 and 2000 partnership income tax returns for the limited liability companies do not indicate that the Trust was a member, and no schedule K-1 was prepared for the Trust for said years.

4. The limited liability company Operating Agreements were not signed by the Trust, and do not mention the Trust.

5. The 2001 returns of partnership income dated April 22, 2002, for 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC contain a schedule K-1 for the Trust, indicating that the Trust had a 15% interest in 2050 and a 17.65% interest in Komart.

6. No credible evidence has been introduced showing that membership interests in the limited liability companies were assigned or otherwise transferred at any time to the RTG-TPD Trust.

7. The Trust did not file income tax returns for the years 1999, 2000, 2001 and 2002 until April, 2003. See Trust Exhibits M - 1, M - 2, M - 3 and M - 4.

8. In April, 2003, Lee also attempted to file amended income tax returns for the limited liability companies, even though he was no longer operating manager for those limited liability companies. See Trust Exhibits I-1, I-2, I-3 and I-4. These unsigned amended returns have handwritten Schedule K-1's for the Trust, whereas all other parts of these returns are typewritten.

9. No evidence has been introduced showing that any consideration was give for the transfer of any membership interests in the limited liability companies to the Trust.

10. Indeed, the evidence indicates that Lee, and no the Trust, received interests in the limited liability companies in consideration for his services rendered on behalf of those limited liability companies.

11 In paragraph 46 of his counterclaim in the case of 2050 S. Havana (DTSE), LLC versus Lee, Case No. 02CV384, Arapahoe County District Court, Lee admits that the operating agreement for said limited liability company provided for him to serve as project manager for the Denver project and to receive a percentage interest in the shopping mall, supermarket and restaurant.

## II. CONCLUSIONS OF LAW

**BASES UPON THE ABOVE FINDINGS OF FACT,  
THE COURT CONCLUDES AS FOLLOWS:**

1. Stan Lee did, indeed, receive an ownership interest in the limited liability companies, and those interests have never been transferred to the Trust.

2. Stan Lee owns a 15% interest in 2050 S. Havana St. (DTSE), LLC and a 17.65% interest in Komart Korean and Japanese Supermarket, LLC.

3. Plaintiffs have sustained their burden of proving that Stan Lee is the owner of the membership interests in 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC.

4. As a result, any distributions payable by those limited liability companies must be paid to Plaintiffs as Lee's judgment creditors. Such payments are to be made at the address designated by Plaintiffs in writing.

5. Based upon the above, the Court need not address Plaintiffs' arguments that the Trust was a revocable trust or that the trust is void under the Rule Against Perpetuities.

**IT IS THEREFORE ORDERED, ADJUDGE AND  
DECREED:**

1. Plaintiffs are the owners of the respective interests in the limited liability companies, to wit: 17.65% interest in and to Komart Korean and Japanese Supermarket, LLC, and 15% interest in and to 2050 S. Havana St. (DTSE), LLC. The limited liability companies shall note Plaintiffs' ownership of

record. Said membership interests are transferred to Plaintiffs toward partial satisfaction of their judgment pursuant to the Court's previous Order of December 16, 2002.

2. The Intervenor's' Motions to interplead funds, filed respectively on February 13, 2003 and September 18, 2003 are hereby GRANTED.

3. The funds so deposited to the Registry of the Court shall be paid and disbursed to Plaintiffs, in care of Hochstadt, Straw, Strauss & Silverman, P.C., 2043 York Street, Denver, CO 80205 and credited against the Plaintiffs' judgment against Defendant Stan Lee.

DONE AND SIGNED in Open Court this 9<sup>th</sup> day of January, 2003.

BY THE COURT:

/s/

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Hon. J. Mark Hannen  
DISTRICT COURT JUDGE

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**APPENDIX C-5**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4**

**[Filed August 30, 2004]**

<b>THE DIANE KATCHEN TRUST</b>	)
<b>and the BARNEY KATCHEN TRUST</b>	)
<b>Plaintiffs</b>	)
	)
<b>v.</b>	)
	)
<b>K-RODEO PROMENADE,</b>	)
<b>a Colorado Limited Liability Company;</b>	)
<b>STAN LEE, individually, and</b>	)
<b>eKOMART.COM, INC., A Colorado corp.</b>	)
<b>Defendants</b>	)
	)

**ORDER RE: PENDING MOTIONS**

The Court enters the following orders with respect to the pending motions listed below.

1. The motions filed by Stan J.H. Lee and Mi Yung Lee

as trustee of the RTG-TPD Trust for an extension of time to fill reply briefs are Granted. The reply briefs filed by Stan Lee and by Mi Young Lee as trustee of the RTG-TPD Trust are deemed timely filed.

2. RTG-TPD Trust's motion under Rule 59 C.R.C.P. for Post-Trial Relief on Court's Findings of Fact, Conclusions of Law and Judgment is DENIED.
3. Stan Lee's motion under Rule 59 C.R.C.P. for Post-Trial Relief on Court's Findings of Fact, Conclusions of Law and Judgment is DENIED.
4. Stan Lee's motion under Rules 59 and 62 C.R.C.P. for Stay of Operation of Court's Findings of Fact, Conclusions of Law and Judgment is DENIED.
5. Mi Yung Lee's motion under Rule 59 and 62 C.R.C.P. for Stay of Operation of Court's Findings of Fact, Conclusions of Law, and Judgment is DENIED.

SO ORDERED.

Dated this 30th day of August, 2004.

BY THE COURT:

/s/

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J. Mark Hannen  
District Court Judge



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**APPENDIX C-6**

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**COLORADO COURT OF APPEALS**

**No. 04ca2077  
Tr. Ct. No. 01CV222**

**[Filed December 24, 2004]**

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Diane Katchen Trust and	)
Barney Katchen Trust,	)
Plaintiff-Appellees,	)
	)
Stan Lee and RTD-TPD Trust,	)
Mi Yung Lee Trustee,	)
Defendant-Appellants,	)
	)
and	)
	)
2050 S. Havana Street LLC, and	)
Kmart Korean & Japanese Supermarket,	)
Intervenor-Appellees.	)

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Upon consideration of the motion to amend the caption,  
the Court GRANTS the motion.

Upon consideration of the motion to dismiss the appeal as  
untimely filed, the Court GRANTS the motion. The trial court  
must rule upon a motion for post-judgment relief pursuant to  
C.R.C.P. 59 within 60 days. C.R.C.P. 59(j). If the trial court

fails to rule on the motion within 60 days, it is deemed denied by operation of law and the time for filing the notice of appeal commences. A trial court lacks jurisdiction to rule on a post-trial motion after the 60<sup>th</sup> day; such a ruling is void. Canton Oil Corp. v. District Court, 731 P.2d 687 (Colo. 1987); Anderson v. Molitor, 738 P.2d 402 (Colo. App. 1987).

Therefore, the Court finds that, at the latest, the C.R.C.P. 59 motion was deemed denied by operation of law on March 9, 2004. Thus, a notice of appeal should have been filed on or before April 23, 2004. C.A.R. 4(a); Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980). However, appellant's notice of appeal was not filed until October 8, 2004, and it does not appear that any extension of time for appealing was ever granted. Moreover, this Court has authority to grant only a 30-day extension of time to file a notice of appeal, and that period expired on May 24, 2004. Therefore, this Court is without jurisdiction over the appeal.

BY THE COURT:

Rothenberg, J.  
Webb, J.  
Piccone, J.

Dated: Dec. 24, 2004

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**APPENDIX C-7**

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**SUPREME COURT  
STATE OF COLORADO  
TWO EAST 14<sup>TH</sup> AVENUE  
DENVER, COLORADO 80203**

**Case No. 05SC169**

**[Filed May 16, 2005]**

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STAN J.H. LEE and	)
RTG-TPD TRUST,	)
Petitioners	)
	)
v.	)
	)
THE DIANE KATCHEN TRUST	)
and THE BARNEY KATCHEN TRUST	)

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**CERTIORARI TO THE COURT OF APPEALS,  
04CA2077  
DISTRICT COURT, ARAPAHOE COUNTY,  
01CV222**

**ORDER OF COURT**

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

78a

**IT IS THIS DAY ORDERED** that said Petition for Writ of Certiorari shall be, and the same hereby is, **DENIED.**

**BY THE COURT, EN BANC, MAY 16, 2005.**

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**APPENDIX D**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV384  
Div.: 402**

**[November 21, 2003]**

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2050 S. HAVANA (DTSE), LLC d/b/a	)
KOMART MALL ON HAVANA HEIGHTS	)
& KOMART KOREAN & JAPANESE	)
SUPERMARKET, LLC	)
Plaintiff	)
v.	)
	)
MR. STAN J.H. LEE	)
Defendant and Counterclaimant	)

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**REPORTER' S TRANSCRIPT**

The Status Conference in this matter commenced on Friday, November 21, 2003, before the HONORABLE MARILYN LEONARD, Judge of the District Court.

This is a transcript of the entire proceeding had on that date.

[p.2]

THE COURT: 2002 CV 384, 2050 South Havana vs. Stan Lee.

MR. BECK: Your Honor, Howard Beck, Registration No. 3075, on behalf of the Plaintiff.

MR. FRIED: Good morning, Your Honor; David Fried, F-R-I-E-D, Registration 19238, on behalf of Defendant Stan Lee.

THE COURT: We're here for a status conference. You're scheduled to go to trial when?

MR. Beck: A week from Monday, Your Honor. It's set for a one-week trial to the Court.

THE COURT: Is that December 1st?

MR. BECK: It is, Your Honor.

THE COURT: That's also a criminal docket week, and criminal trials are sat. Oh, it's been reset. It's been changed. You're now a Division 401 Case.

MR. FRIED: This is news to us.

THE COURT: Well, we weren't going to tell you until a week from Monday.

MR. FRIED: Well, better to know now.

MR. BECK: Are we in the wrong place this morning?

THE COURT: That's okay. I don't think that he expects to talk to you today. So tell me this: what's [p.3] going on? Are you going to need to go to trial?

MR. BECK: Your Honor, I'm -- can I take five minutes?

THE COURT: Sure. You can even sit down if you'd be more comfortable, gentleman.

MR. BECK: I can't think sitting down. I once did a case in Norfolk, Nebraska, and nobody stands up. I mean everybody sits. The Judge is like three feet away. Counsel were together at the same table. It took me all week to get used to sitting down and talking.

Let me refresh your recollection. This case came up for status conference once before, early this summer, and the case got set over because there's a related case in front of Judge Hannen. There was another statue conference in front of -- it was here, but it was in front of the -- Judge Smith was sitting in for you.

THE COURT: Okay.

MR. BECK: Judge Smith entered an order pretty much at his own kind of behest, if you will, and we said, Look -- we explained to him what was going on before Judge Hannen, and we told him that we thought the case in front of Judge Hannen would be resolved shortly. Neither Mr. Fried -- We are both counsel in that case, but we are not lead counsel in that case. Mr. Lee has another attorney, Dr. Kishan Khanna, and Richard Strauss represents the [p.40] plaintiff in that case.

Now, why do we even care about that case is the question. Plaintiff LLC's have membership interests that include Stan

Lee, or include a family trust that Stan Lee set up. There were 4 1/2 -- 4 days, 4 1/2 days of hearings in front of Judge Hannen on the issue of who owned those interests. Was it Stan Lee or was it his family trust? If it's Stan Lee, personally, then the plaintiff in that case can get to those membership interests, or if it's his family trust, With spendthrift provisions, maybe not.

After 4 1/2 days of hearing -- or I shouldn't say 4 1/2 days of hearing, I should say hearings on four or five different days, because they weren't all-day hearings, all of which came up in the process of the garnishment. The end result was that Judge Hannen, on October 3rd, issued oral findings of fact, conclusions of law and judgment. Those oral findings of fact said Start Lee owns interests, not his family trust. The order however, has not been entered. Okay.

THE COURT: Who's in charge of preparing the order?

MR. BECK: Richard Strauss, the plaintiff's attorney did -- he should have done it. The parties, Mr. Lee and his counsel, refused to agree to the written form of order, even though Mr. Strauss got a transcript of the [p.5] finding of facts, conclusions of law, and filed a flurry a bevy -- whatever --

THE COURT: A plethora.

MR. BECK: A plethora of motions. They filed motions for post-trial relief. They filed motions to modify the judgment, all of which haven't been entered yet. They filed motions, exceptions to the form of order that had been prepared, although it seems to me, and I think it does reflect Judge Hannen's oral finding, and the most recent thing they filed in that case was a Motion under Rule 19 to add the



individual members as parties to that case, the other members, Stan Lee being one of them.

THE COURT: Oh, of the trust.

MR. BECK: Of the plaintiff's in your case.

THE COURT: Oh, okay.

MR. BECK: The trust -- Stan Lee is not the trustee at this time on his family trust. That is his now former wife, Yee Yung Lee (phonetic).

THE COURT: Who doesn't live here any more.

MR. BECK: I don't think she ever did. She lives in New Jersey. I missed one thing. I don't know how I managed to do that, but I missed one. There's also a pending motion in front of Judge Hannen to dismiss that case on grounds that Stan Lee was never properly served a year and a half, two years ago. Judge Hannen, although he \* \* \* 01CV 222. Did you want a copy of that order?

THE COURT: Yes, please. It's not in the file. (Mr. Beck hands document to the Court.)

THE COURT: Thank you.

MR. BECK: Herculean efforts notwithstanding,

\* \* \*

[p.7]

Judge Hannen does not have an order yet. I should say continuing Herculean efforts notwithstanding.

THE COURT: Well, I want you to know I think Judge Hannen does an excellent job, so I agree with you.

MR. BECK: Oh, I'm sure I speak for Mr. Fried when I say the patience he showed makes Job look like he's an inpatient person. It's been a real interesting thing.

THE COURT: All right. So what do -- first of all, did you mediate?

MR. BECK: No, because -- here's the problem: If we -- if Judge Hannen had been allowed to sign the findings of fact, conclusions of law, and order in, say, mid-October, you know, when they are prepared and circulated, it would have had an impact on our case, as Judge Smith recognizes. In fact -- and, please, this is not intended to be directed toward Judge Hannen, because there's -- almost every day in that case, it seems like, has brought one motion or another, motions to dismiss, motions to add parties, motions to amend the proposed oral findings of facts, etc., etc., etc.

The end result is, through each passing day, our ability to settle this case is kind of diminished because each side -- and I'm not speaking for Mr. Fried -- if I were Mr. Lee, I'd think, well, gosh, it's been six weeks. We've got a good chance of him changing his mind.

[p.8]

My clients don't know what's going to happen. I've told them early on, it looks like that case -- that the Katchen trust will basically end up having a right to Stan Lee's interest in the LLC's, because of traverse of garnishment of the order. The ownership interest that Katchen trust is looking for is Stan Lee's interest in the plaintiffs in this case.

The problem is, to get to this point, Judge Hannen first had to make a decision that -- first had to make the decision that Stan Lee owned those ownership interests, and he has done that, at least orally. And I may be able to change his mind. If he confirms that order, then my folks have a certain ability to negotiate and settle. If he changes that order, Mr. Lee potentially has some power. I don't know, because we don't know what he's going to do.

THE COURT: Right, but what I think I hear you saying is it would be premature to go forward at this point in time.

MR. BECK: I think it's premature until we have -- since the mediation, David Fried and I have spoken every day for two months. I mean I went home two nights ago, and I'm sure he went home and said to his wife the same thing -- that that stuff is making us crazy, just because clients keep going off at different angles. Let me say this -- and [p.9] I speak for Mr. Fried -- neither one of us is in any position to ask for a continuance for two reasons one: the case was continued the first time before you. Judge Smith kind of took control of things when he was here and said the case isn't ready to go to trial.

In my mind, the proper time to mediate this case before Judge Borchers, or whoever, is once Judge Hannen has had a chance to clear that stuff off his desk.

THE COURT: All right. What do you think, Mr. Fried?

MR. FRIED: Well, Your Honor, Mr. Beck and I have become quite close over these last six months, and I mean that, not only facetiously. I mean, it's a very positive thing because we've been working very hard.

THE COURT: Well, you know what? In my opinion, professional attorneys do develop a professional business relationship that lingers over the years after a case is settled. Nit-picking, spiteful ones get what they deserve.

MR. FRIED: Well, it's ironic in this case, Your Honor, because the relationship between, let's say, our respective clients and the other party to the Katchen trust case -- there's a lot of animosity there. And what has happened, one of the primary reasons for the plethora, as you put it, of pleadings that have been filed, postjudgment, in the Katchen trust case, is that, [p.10] unfortunately, through no fault of Mr. Strauss, who happens to be the plaintiff's attorney in the other case, there's been a tremendous animosity developed between himself and the gentleman who represents the RTG-TPD trust, which is not the Katchen trust.

There have been a plethora of pleadings. We Just -- if I said that five times, I would probably stumble over that. Mr. Beck and I, coincidentally, were just up in --

THE COURT: Down, down.

MR. FRIED: See, it's my cold, Your Honor. I don't know.

THE COURT: I hope you're not breathing in here.

MR. FRIED: I'm trying not to. Well, anyway, Mr. Beck had to listen to me on the phone for the last week like this.

THE COURT: Yeah, but he has a mask.

MR. FRIED: We Just did check with Judge Hannen's division, and the clerk indicated to us that we're probably looking at several weeks before he signs the orders because there are so many pleadings pending. The problem that we have -- and we never really discussed this -- is we're not coming in here intending to ask for a continuance. I'm just torn between, you know, if the trial were to go forward on December 1st, and we had a deadline to work with, we might be able to hammer out a deal, maybe.

[p.11]

On the other hand, if we push it off, and that let's us sit back, and then -- because we've been negotiating now for the better part of a week and a half, twoweeks, and it's difficult. There's no question about it. But we're still in the process. I'm not sure, frankly, what to ask for. I mean, it would relieve the time crunch if we continued the trial; there's no question about it, and -- but I don't know if that would make all parties step back and say, okay. Now we don't have to talk, you know.

This Katchen trust case, as you well know-- I believe the first time we came before you was May -- I want to say it was May -- has been going on for the longest time, and we've kind

of sat on the sidelines, and just when we thought it was our turn to kind of step up and either do the negotiating or go to trial, this thing goes on.

The attorney representing the trust in the Katchen trust case -- I have to be very careful what I say here -- you can see the smile on Mr. Beck's -- I believe that this individual will continue to file pleadings in that case ad nauseam, regardless of the nature of the ruling handed down by Judge Hannen, until such time as there is no possibility of filing any more district court pleadings.

And I believe that Mr. Beck probably would agree [p.12] with me with regard to that particular issue, unless they happen to prevail on the motions that are pending right now, two of which I would say have zero chance of being granted by Judge Hannen. To be specific, one of them is to sat aside the judgment that's been in effect since August 2001. All right?

THE COURT: Under Rule, what, 6?

MR. BECK: There are six different rules, including Rule 37.

MR. FRIED: The other one, which is, in essence, as to how Judge Hannen could reverse his October 3rd order.

THE COURT: Well, now, how many times have you gentlemen seen that --

MR. FRIED: Happen? In twenty years? Can't speak for Mr. Beck, but zip.

MR. BECK: You can add to that, 33 -- as a total of 53 years.

THE COURT: What a waste.

MR. FRIED: In terms of trial preparation, we would represent to the Court we'd be ready to go to trial. There's no question that we've exchanged exhibits and done our stipulations. All the disclosures have been completed. We know who the witnesses are and everything else. There's no question about that. What we're trying to figure out is what's best in the longer term for both of our clients at [p.13] this stage of the game, and my pessimism is due to the fact that I don't see any end to the litigation in the other case.

And so I don't know which way to go. You know, if Your Honor thinks that it might not be a good idea to go forward, I suppose I'd be inclined to agree. I'm just concerned about what it does to our settlement situation, because I'm not saying it's going bad. I'm not saying it's going good, but it is going, and it's going partially due to the fact that everybody knows they've got a deadline that they're up against.

THE COURT: And that's one of the reasons that I come on so hard at these status conferences and say you better be ready to go, you're going to go. You have three civil cases and I can't continue them indefinitely.

MR. BECK: Mr. Fried is correct, Your Honor; being ready for trial in this case is not an issue. Although it's a trial to the Court, it's going to be a difficult trial because there are -- the principals, the operating managers, the two plaintiffs in this case, speak no English. We're dealing with a group of folks who were born in Korea. Mr. Lee was also born in Korea. He speaks English fairly well.



THE COURT: I think they all came in here one time, didn't they?

[p.14]

MR. BECK: No, I don't think so. They've certainly been in front of -- possibly a year or so ago.

THE COURT: No, that wouldn't have been --

MR. BECK: They're good people. They're operating businessmen. They're all businessmen, but I can tell you, two of the members of the plaintiffs speak no English. One of those is one of the operating managers. The other operating manager speaks some English, but we'll have an interpreter here, and that's our job to bring the interpreter for the entire trial. And so it's going to be, you know -- it's going to be slow going. This is probably a two-day trial. We set it for a five-day trial simply because when we did depositions a year, year and a half ago, it just took forever. I mean it's just slow going.

You know, I'm like Mr. Fried. I don't disagree. I don't think, from the standpoint of my clients, that we're going to get a settlement until two things happen in both of the cases; one, Judge Hannen has to clear pending stuff off his desk, and I grant that they might file a notice of appeal or something like that, but at least that will be signaling to one side or another, this is what's going on here, where Judge Hannen is headed, and I agree with Mr. Fried's analysis as to where those orders are going to come from -- I mean, what direction, but that doesn't mean that the attorney that's representing Stan Lee [p.15] in that case believes that. He clearly doesn't. And to the extent that he has control over his client, his client doesn't believe it either.



THE COURT: Because he's been told.

MR. BECK: Yes, yes. The second thing that's going to be required, and it's in Judge Smith's order, in whether it's Judge Borchers who -- we did a settlement conference about a year and a half ago -- or someone else; it doesn't matter. It has to be a very skilled mediator. I think those two things have to happen if we're going to settle this whole thing: One, Judge Hannen needs to clear the stuff off his desk; and two, we have to have mediation directly thereafter.

THE COURT: Let me ask you this: Is it possible that we could have the trial on December 1st, and I could enter orders that would not be helpful to either side, but would in fact muddy the waters.

MR. BECK: Yes, obviously. Obviously, the answer is yes. I mean Judge hannen could, too, but with each passing day and week, one side or the other is encourage by Judge Hannen's pile of paperwork. I shouldn't say the pile of paperwork; I should say the space used up on his hard drive. And that's what makes it difficult.

THE COURT: You know, and the thing is that if I were to do that, I'd only ensure litigation for the [p.16] foreseeable future.

MR. FRIED: And there's one other issue, too. I mean this is a game of Can you Top This? But, unfortunately, there is also the possibility of another litigation, not as yet filed, not a continuance of the litigation here or in the Katchen trust, basically, Your Honor, but a brand new litigation as a result of some of the things that are going on, that we talked about. I'm not going to get into the specifics of that, but -- and I've advised my client, depending on how things go, that he may --

and even though I'm not trying to encourage litigation, but I do have to advise him that he may have a cause of action, too.

So there's that third front out there too. I mean, the best interests of everybody -- and we'll all agree on this -- is clearly a settlement, which we're trying to get to, but we could wind up with a continuation of the litigation of the Katchen trust case. I mean, frankly, you know, at whatever point we went into trial in this case, regardless of the ruling, I imagine one side or other might very well be encouraged to, as they have a legal right to do, pursue either appellate or further district court remedies.

And there is the possibility of another litigation out there on another issue, which we're trying [p.17] to get wrapped up in the whole thing, as far as we can do. The -- as I indicated before, representing the RTG-TPD in the Katchen trust case is an individual to whom we have been -- all of us, Mr. Beck, myself, Mr. Strauss in the other case -- unable to reason with, in any particular way.

THE COURT: Is he already -- let me ask you about this particular individual. Is a he name-caller, is he unprofessional?

MR. BECK: Yes. No, I'm sorry. I don't see --

THE COURT: Here's my recommendation to you -- and this is only a recommendation, you know -- there is a group of lawyers in Denver, part of the Denver Bar Association, who will attempt to talk to people like this and help them become professional. Because that's what you gentleman are. That's what I tried to tell you. You're professionals. This is not your life. It's your job. And it sounds like that person is not able to differentiate.

MR. BECK: What's further complicating is he is an Indian; I mean Asian Indian, a trained attorney who has -- and that's why he's called doctor, because he has a Ph.D. from the University of Bombay. He speaks English as a second language. We've got -- I mean, it's -- his client speaks English, having been born in Korea. He speaks English, having, I guess spoken, what, Hindu? And I've had the sense, in sitting through some of those hearings before [p.18] Judge Hannen that while two plus two equals four, for our walk up the hill, is fine, but when he gets into the nuances of what's going on, either in testimony or exhibits or before the Court, it's lost.

It's lost with Dr. Khanna, and then it's lost when he tries to communicate with his client. And to the extent that I'm saying that, that's made Mr. Fried's life a lot more difficult than it has mine and -- well, just to give you an example, as far as specific things -- I don't mean to disparage the opposing counsel, myself, because I am counsel of record in that case, as well -- I don't believe he's specifically aimed his barbs at Mr. Beck yet.

Such things as, for example, at hearing, Mr. Strauss walked up to him and asked him to stipulate as to exhibits that he had already received. He refused to do so, made Mr. Strauss go through actually having to, you know, lay a foundation and all those other things, but he is an attorney of record in this other case and there's not a whole lot that we can really do about that situation.

THE COURT: Other than -- and I'm not sure that -- the inter -- I forget what it's called -- not the interdisciplinary counsel. I'm not sure those folks can help you out, you know, and we might have similar problems if we flew to England to

try a case because we don't understand the nuances of the law in England.

[p.19]

MR. FRIED: But I think "professional" is a universal thing.

THE COURT: One would presume it is.

MR. BECK: Particularly in countries where the barristers are common -- have a common-law tradition, which is in India as much as it is the United Kingdom.

THE COURT: Because it's based on English common law. Well, we can't do much about him, but I'll tell you what: I have the sense that forcing you all to go to trial December 1 is not in anybody's best interests. So I'm not going to dismiss you. I'm going to find that you are unable, under these circumstances, to mediate, as you were required to do by Judge Smith, and I'm Just going to hold this case in abeyance for now. I guess we could sat a new trial date, but I think we need to set it out six or eight months. Would you all agree?

MR. BECK: I agree for the plaintiffs, but reluctantly, yes. It probably -- yeah, because clogging up your court time and then coming back in here and in a short period of time is just not right. I don't thank it would be hurtful to walk out of here today with a new trial date. I don't disagree with your time frame.

MR. FRIED: I guess I would reluctantly agree. I'm just -- you know, just to reiterate, my other concern is I just hope it doesn't make -- that's okay. Fine.

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**APPENDIX E**

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December 12, 2003

Mr. Steve A. Mains  
Attorney at Law/Mediator  
2103 Montana Drive East  
Golden, CO 80401

RE: *2050 S. Havana (DTSE), LLC and Korean & Japanese Supermarket, LLC; and 2050 S. Havana St. (DTSE), LLC, intervenors; and additional party, the RTG-TPD Trust; Arapahoe County District Court Case No. 01 CV 0222, Division 206 (Judge Hannen)*

Dear Steve:

I write, first, to confirm that you have set aside the date of Tuesday, February 3, 2004 to conduct the mediation in, at present, the "Komart" case, which is the first case listed herein above. There have been two mediation orders entered in the Komart case, copies of which are enclosed. That case is set for a one-week trial to the Court commencing Monday, April 26, 2004.

The second case listed (the "Katchen Trust" case) is not currently set for trial, as it is in a "post-judgment" mode. Judge Hannen issued oral findings of fact, conclusions of law and judgment in early October on traverses of garnishments brought on behalf of the Katchen Trusts. No written final Order has yet been entered and there has been a veritable

barrage of Motions filed on behalf of the Defendant in that case, Stan Lee (who is also the Defendant in the Komart case), as well as on behalf of a family trust that Mr. Lee created a number of years ago, the RTG-TPD Trust. Although it is entirely possible that Judge Hannen will have entered final Orders in the Katchen Trust case by the mediation date of February 3, 2004, I very much doubt that will be the end of the matter, due to additional litigation and/or appeals in the Katchen Trust matter. Therefore, it is my strong belief that a joint mediation involving both the Komart and the Katchen Trusts cases would be very much to everyone's advantage, particularly since Mr. Stan Lee is a common Defendant in both cases. Therefore, if necessary, I will file an appropriate Motion on behalf of the Komart entities in the Katchen Trusts case to require mediation (the Komart entities are Intervenor in that case as indicated herein above).

Counsel of record are as follows:

1. The Komart v. Stan Lee case:

*Plaintiffs* are represented by the undersigned.

The *Defendant*, Stan J.H. Lee, is represented by Mr. David M. Fried, 7887 East Bellview Avenue, Suite 1100, Englewood, Colorado 80111. Telephone (303) 834-4435; Fax (303) 824-0580.

2. The Katchen Trusts case:

The *Katchen Trusts* are represented by Mr. Richard S. Strauss, Hochstadt Straw Strauss & Silverman, Attorneys at Law, 2043 York Street, Denver,



Colorado 80205. Telephone: (303) 329-9222; Fax: (303) 333-7127.

The *Defendant*, *Stan J.H. Lee* (a/k/a Stan Lee), is represented in this case by *Mr. Fried*, above named, and also by *Dr. Kishan K. Khanna*, an Advocate of the Supreme Court of India, L.L.M., Ph.D., M.P.A., B.E., I.R.E., A.F.R., AsS.I., 3515 South Tamarac Street, Hampden Executive Plaza, Suite 200, Denver, Colorado 80237. Telephone: (303) 757-5000, (303) 521-2343, (303) 766-3573; Fax: (303) 824-8803.

*Dr. Khanna* also represents the *RTG-TPD Trust* in this matter.

I understand your fees are \$285 per hour for study time and for the actual mediation. In terms of location of the mediation, I have no problem with having you conduct it here at our office. We have one small and two larger conference rooms available to you for such use. At the present time, since only the Komart entities and Mr. Lee in the Komart case are under a Mediation Order, your fees would presumably be split 50-50. On behalf of my clients (the Komart entities), I am pleased to guarantee payment of their mediation fees. In terms of Mr. Stan Lee, represented by David Fried in our case, I will let you and Mr. Fried discuss directly payment from Mr. Lee for the mediation. I will tell you that if Mr. Fried represents that he has sufficient monies to pay for Mr. Lee's share of the mediation in his trust account, you may rely upon such representation.

At such time as the Katchen Trust case is added to this mediation (whether by agreement of the parties or by Court Order), that agreement or Order will specify how your mediation fees should be allocated with the addition of the

Katchen Trusts entities. It will then be my suggestion to other counsel that your fees be split one-third to the Komart entities, one-third to Mr. Lee, and one-third to the Katchen Trusts. Given the number of parties and entities, I am mindful of the fact, however, that almost any combination could be conjured up.

I am copying this letter to Mr. Strauss and to Mr. Fried, as we have been in contact regarding setting up this mediation. I stress, however, that Mr. Strauss' clients, the Katchen Trusts, are not presently subject to a Mediation Order, nor, for that matter, is the RTG-TPD Trust. Therefore, I am not copying this to Dr. Khanna, who is, in any event, presently in India. However, as indicated above, I personally believe that it is in everyone's best interests to have the Katchen Trusts case added to the mediation, and I will file the Motion to do so at the appropriate time, hopefully, with Mr. Strauss' and Mr. Fried's concurrence.

Please send whatever paperwork is necessary to Mr. Fried and me at this time; you may also wish to copy Mr. Straus with the understanding that he may not enter into any type of mediation agreement until a later date.

Thank you for undertaking what I suspect will be a most fascinating mediation. Since a number of the individual members of the Komart entities speak very little English (it is entirely possible that there will be four or five individuals present from those groups), I will also schedule an interpreter, as I have found that to be most useful.



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Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BECK AND CASSINIS, P.C.

/s/

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Howard J. Beck

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**APPENDIX F**

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February 26, 2004

Mr. David M. Fried  
Attorney At Law  
7887 E. Bellview Avenue, Suite 1100  
Englewood, CO 80111

Re: Komart v. Stan Lee: Arapahoe County District  
Court Case No. 02CV384, Div. 402

Dear David:

Yesterday's mail brought your Motion and Notice of Intent to Withdraw as Counsel for Stan Lee in the above-referenced litigation. I note that these documents are dated February 24, 2004 and were mailed to Mr. Lee. Therefore, the earliest that the Court can grant your Motion to Withdraw would be 18 days hence which, assuming my calculations are correct, will be Monday, March 15, 2004.

Mediation in this matter is set for Wednesday, March 17, 2004 according to the documents received from the Multi-Door Court Services Office of the Eighteenth Judicial District. Although I expect you have received these documents separately. I enclose them just in case. Please note the deadlines set forth therein (March 2, 2004) requires certain fees be received by the Multi-Door Court Services Office ten (10) full business days prior to the mediation date, but that is up to you and Mr. Lee.

Finally, I remind Mr. Lee of the Order of Judge Leonard dated November 21, 2003 in which she requires this mediation "pending sanctions for non-compliance from any party." Please inform Mr. Lee that if he does not comply with the enclosed mediation instructions and requirements and/or does not appear at the mediation in person, I will seek to have Judge Leonard enforce the Order.

On behalf of this firm's client, the plaintiffs in the above-referenced litigation, we look forward to a meaningful mediation conducted in good faith. My clients will have appropriate representatives including the respective Operating Managers present for all mediation.

Should you have any questions or should this be inconsistent with your understandings, please advise me immediately in order that we may proceed accordingly. I would also request, given your pending withdrawal, that you furnish a copy of this letter and the enclosures immediately to your client.

Very truly yours,

BECK AND CASSINIS P.C.

/s/ \_\_\_\_\_  
Howard J. Beck

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APPENDIX G-1

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April 6, 2004

Mr. Stan J.H. Lee

VIA EMAIL ONLY  
SIERRA5533@aol.com

Re: Komart-02CV384, Arapahoe County

Dear Mr. Lee:

This is in further response to your e-mail of Monday afternoon, April 5, 2004. I have separately sent to you either by e-mail or at the fax number you gave us our Response to your "Motion for Extension of Time to the Trial Date." Also, I have forwarded you a copy of the Contempt Citation materials and the Motion for Entry of Amended Trial Management Order and proposed Trial Management Order. Should you have any questions with regard to these documents, you may of course call me at any time. Also, I have copied Mr. David Fried with this e-mail; to my knowledge he may still be your "attorney-of-record" in this case. I acknowledge, however, that you do not wish Mr. Fried to any longer represent you. He has filed the required paperwork to be excused as your attorney and I have not objected thereto. However, since I have not seen an Order allowing Mr. Fried to withdraw, I am also going to send him a copy of this e-mail as well.

Concerning the matters set forth in your e-mail of April 5, 2004, please be advised of the following:

1. If you wish to have a mediation/settlement conference on Thursday, April 15, 2004, I believe it is your responsibility to first make those arrangements with Mr. Michael Travers or another mutually acceptable mediator. Please recall that I went to the trouble of engaging Mr. Travers the last time only to have you instruct the Office of Dispute Resolution that you were unwilling to proceed, regardless of the reason. At such time as Mr. Travers contacts me (or you do) indicating that he is available on April 15<sup>th</sup> and that you have made arrangements with him to pay your portion of his fees, I will be happy to contact representatives of Komart and 2050 S. Havana to see if they can be available on that date. Again, however, in view of our previous difficulties in these regards, I will not contact my client representatives until I know that Mr. Travers is available on April 15<sup>th</sup> and that you have made satisfactory arrangements with him.
2. I have separately requested that you furnish me with a current street address. As indicated, the address that you provided to the Court in your Motion to Continue Trial Date does not seem satisfactory as the people at that address asset you no longer work there and have not for several months. In the interim, I will do my best to contact you by fax and/or e-mail as I did last evening.
3. I am not sure what to make of your comments about a "lack of proper attorney representation." Nor am I sure I understand your comments about "first time ever request for discovery from my side." In fact, Mr. Fried took the oral deposition of three persons following your oral deposition last year (I believe you were present). Furthermore, Mr. Fried and I have cooperated most diligently (as we are required to do under C.R.C.P. 26) in exchanging documents and making the same available to

each other. Therefore, I have no idea what other "discovery" you could be talking about.

4. Regarding paragraph 6 of your e-mail, "motion to the court as to document the process that would have transpired"; I have no idea what you are talking about. More information, please. In any event, the documents I have furnished to you late yesterday, Monday, and this response to your e-mail pretty much "catches you up to date" on what has happened since you and Mr. Fried parted company. I do understand your comments about why you were "reluctant" to attend the March mediation. Unfortunately, that is not something you need to address to me but rather to Judge Leonard at the time and place of the Contempt Citation hearing on Friday, April 16<sup>th</sup> at 9:00 a.m. Please also recall that at 8:15 a.m. that same morning, again before Judge Leonard, the trial call or trial status conference is scheduled.

As always, should you have any questions, or wish to discuss this matter, please feel free to contact me at any time.

Regards,

Howard J. Beck

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**APPENDIX G-2**

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To Stan Lee: fax number 1(815) 846-7550

Subject: Mediation - Komart vs. Lee, Case No. 02 CV 384

As promised I have contacted my client representatives concerning your proposed accelerated mediation for April 15 or 16, 2004. Unfortunately they are not available on such short notice. John Jun has business representatives here from Korea on these dates. Boo Soo Lee will be in Korea on these dates.

Enclosed is a copy of Judge Leonard's Order denying Mr. Fried's Motion to Withdraw based upon, among other things, your requests that he do so. I do understand you and Mr. Fried may renew that request at the Trial call/Trial Status Conference on Friday, April 16, 2004 at 8:15 am.

Regards

Howard J. Beck

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**APPENDIX H-1**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 02 CV 384  
Div.: 402**

**[Filed March 9, 2004]**

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2050 S. HAVANA (DTSE), LLC d/b/a	)
KOMART MALL ON HAVANA HEIGHTS	)
and KOMART KOREAN & JAPANESE	)
SUPERMARKET, LLC	)
Plaintiff	)
	)
v.	)
	)
STAN J.H. LEE,	)
Defendant	)

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**ORDER FOR CONTEMPT CITATION**

Plaintiffs' Expedited Verified Motion for Sanctions Re: Court Order Requiring Mediation ("Motion") coming on before the Court on this date, the Court having reviewed said Motion and the Court's file on this matter and the Court fining that there is an Order dated November 21, 2003



requiring the parties to attend mediation within six weeks of the date of a signed order from Judge Hannen in Division 206, and the Court noting that such orders from Judge Hannen were issued effective January 9, 2004, the Court further noting that its order of November 21, 2003 informed the parties that noncompliance from any party with the Order to attend mediation would result in sanctions being imposed against such party or parties and it appearing from the verified allegations of the Motion that the Defendant, Stan J.H. Lee, in this matter has refused or neglected to participate in and prepare for the mediation that had been scheduled upon due notice for March 17, 2004 to commence at 10:00 a.m.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Clerk of the District Court forthwith issue a Contempt Citation to said Defendant, Stan J.H. Lee, in the form attached hereto and made a part hereof and that said Defendant shall appear before the Court in the 16<sup>th</sup> day of April, 2004 at 9:00 a.m. and shall then and there show cause why he should not be held in contempt of Court.

IT IS FURTHER ORDERED that this Order together with the Expedited Verified Motion and Contempt Citation may be served by a private process server.

DONE AND SIGNED in open Court this 9 day of March, 2004.

BY THE COURT:

/s/ \_\_\_\_\_  
District Court Judge

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**APPENDIX H-2**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 02 CV 384  
Div.: 402**

**[Filed March 17, 2004]**

2050 S. HAVANA (DTSE), LLC d/b/a	)
KOMART MALL ON HAVANA HEIGHTS	)
and KOMART KOREAN & JAPANESE	)
SUPERMARKET, LLC	)
Plaintiff	)
	)
v.	)
	)
STAN J.H. LEE,	)
Defendant	)
	)

**CONTEMPT CITATION TO STAN J.H. LEE,  
DEFENDANT**

**GREETINGS:**

**PURSUANT TO THE Order of this Court dated the 9<sup>th</sup>  
day of March, 2004, you are hereby ordered and directed to**

be and personally appear in Division 402 of the Arapahoe County District Court located at 7325 S. Potomac Street, Centennial, Colorado 80112 at 9:00 a.m. on the 16<sup>th</sup> day of April, 2004 to then and there show cause why you should not be held in contempt of court for your failure to comply with the Order of this Court dated November 21, 2003 and

FURTHER, why you should not be ordered to pay Plaintiffs' reasonable attorneys' fees incurred in instituting this contempt citation action, and

FURTHER, why a fine and/or imprisonment should not be imposed upon you to vindicate the dignity of this Court and to ensure further compliance of the orders of this Court, and

YOU ARE FURTHER INFORMED THAT IF YOU FAIL TO BE AND PERSONALLY APPEAR BEFORE THIS COURT AT THE DATE, TIME AND PLACE HEREIN SPECIFIED, A BENCH WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED the 17 day of March, 2004.

Tammy Herivel, Clerk of the court

By: \_\_\_\_\_  
Deputy Clerk

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**APPENDIX I**

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Subject: 2050/Komart vs. Stan Lee - Settlement purposes only

Date: 4/9/2004 7:36:35 AM Pacific Standard Time

From: mail@beckpayne.com

To: SIERRA5533@aol.com

*Sent from the Internet (Details)*

Although we were not able to schedule a settlement conference for next week that does not mean we cannot speak directly. Although I've not spoken to my clients about this, please consider the following approach: **Both parties agree to drop their claims in this litigation.** This avoids the attorneys' fees and costs for both and would allow you to concentrate on the "Katchen Trust" case as you choose. I can understand that finding new counsel is difficult and expensive and the costs of "discovery" even if allowed through a continuence should Judge Leonard allow it is expensive also.

Also should 2050/Komart realize a judgment against you in this case it would be offset through liens against any entitlement you might have in the Katchen Trust case. Please understand I am not acknowledging that you would have any recovery in the Katchen Trust case - this is mor in the context of "what if."

111a

Give me a call if you wish to pursue this approach.

Regards,  
Howard Beck  
Beck and Cassinis, P.C.  
3025 S. Parker Road  
Suite 200  
Aurora, CO 80014  
(303) 750-1567

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**APPENDIX J**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 02 CV 384  
Div.: 402**

**[June 3, 2004]**

2050 S. HAVANA (DTSE), LLC d/b/a	)
KOMART MALL ON HAVANA HEIGHTS	)
and KOMART KOREAN & JAPANESE	)
SUPERMARKET, LLC	)
Plaintiff	)
	)
v.	)
	)
STAN J.H. LEE,	)
Defendant and Counterclaimant	)
	)

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**REPORTER'S TRANSCRIPT**

The Hearing on Contempt in this matter commenced on Thursday, June 3, 2004, before the HONORABLE MARILYN LEONARD, Judge of the District Court.

This is a transcript of the entire proceeding had on that date.

[p.2]

THE COURT: 2002 CV 384, 2050 South Havana vs. Stan Lee.

MR. BECK: Howard Beck on behalf of the plaintiff, Komart Mall and Komart Supermarket and 2050 South Havana Street.

DR. KHANNA: I do represent Stan Lee, Defendant.

THE COURT: Your name is what?

DR. KHANNA: Dr. Khanna.

THE COURT: How do you spell your last name, please?

DR. KHANNA: K-H-A, double N-A. I filed my entrance of appearance today and brought a copy.

THE COURT: Where's Mr. Lee?

DR. KHANNA: Your Honor, he couldn't make it because he has just started another job and he wanted the Court to --

THE COURT: Will, we have a problem here. Is this not for contempt? Was Mr. Lee personally served?

MR. BECK: The Court may recall that Mr. Lee appeared at the trial call or trial readiness conference -- I always forget what they call it -- on the 16th of April. Mr. Lee was personally here. We had not served Mr. Lee because he had

an incorrect address. He furnished the Court his correct address on that date. The Court then had [p.3] its clerk prepare, and the Court signed, an alias contempt citation for this afternoon at this time. And that was personally served upon Mr. Lee by the Court's clerk in the Court's presence.

THE COURT: More than twenty days have passed since that date. The Court has jurisdiction over the parties and over the subject matter. Sir, why would I not issue a bench warrant for Mr. Lee?

DR. KHANNA: May I just mention that he, Stan Lee, has personally appeared on 16 April, and his impression was that he had to go to this mediation. He did return to mediation. He had --

THE COURT: Sir, you're going to have to speak more slowly. The court reporter isn't getting this.

DR. KHANNA: Stan Lee, with regard to the order for appearing for mediation -- Mr. Stan Lee appeared on 3<sup>rd</sup> May for the mediation, which was arranged by Mr. Beck. He came here. He had attended mediation, and they insisted on the report filed by Mr. Beck in the Court status report saying that the mediation was conducted and the parties could not resolve the dispute.

THE COURT: Well, that does not resolve the issue, and the issue, Dr. Khanna, is that Mr. Lee is to be here under a contempt citation, and he's supposed to be here under a contempt citation which was served in court.



[p.4]

He does not appear. I am just wondering why I wouldn't issue a bench warrant for his arrest.

DR. KHANNA: Your Honor, may I submit I have filed a defendant's response to the motion which has been made, and my submission is that if the next date is given, then Mr. Lee can appear because he was --

THE COURT: No, I'm sorry, Dr. Khanna. You're making me very angry here. Mr. Lee has been obstreperous throughout this case, and this is, in my opinion, another example of his refusal to comply with court orders.

DR. KHANNA: Your Honor, may I submit there's nothing like that. The whole problem is that he's in such a -- he has suddenly changed his job. He had to change his job. He came here a number of times. His problem is to come in and appear personally, and he's explained to me, and it is my humble request, Your Honor, that another date may be given as that he's able to appear.

It's not that he wants to disobey the Court. That is not the case, Your Honor. The question is whether he is willingly not coming. That's not the case. He's in a helpless condition. That is why he's not able to make it, and he called me, especially, and he requested that I should request the Court to seek another date and also file on his behalf this response. Your Honor, may I kindly show it the response? I did file a copy and I would like to [p.5] submit before this Court the --

THE COURT: When is the next hearing scheduled for this case?

MR. BECK: If the Court please, there's nothing scheduled.

DR. KHANNA: Your Honor, may I approach?

MR. BECK: Your Honor, the Court may recall that Mr. Lee appeared last time. The Court allowed his then-withdrawing attorney, Mr. David Fried, to withdraw, and then based upon that withdrawal, and upon Mr. Lee's representations that Dr. Khanna -- he wished Dr. Khanna to participate in mediation and to represent him in this case. The Court vacated the trial. It has not been reset, and that's the next -- I assume -- one of the next items on the agenda, but I can tell you that I asked Mr. Lee after the last hearing, did he want to schedule a mediation after Dr. Khanna returned from India and he said no, he wanted to do it pro se.

He did do it pro se. We did do mediation through the Office of Dispute Resolution. Nothing was resolved, but Mr. Lee was present for the mediation, but he was pro se. Dr. Khanna or any attorney was not there to represent him.

DR. KHANNA: Your Honor, I want --

THE COURT: Sir, please don't interrupt.

MR. BECK: It would seem to me that -- let me suggest that the Court reschedule this contempt hearing and issue the bench warrant, returnable on the day that would give the Court a chance to review Dr. Khanna's submission. The bench warrant will assist, I think, the Court in having some assurance that Mr. Lee will be here next time and will give me a chance to respond to whatever it is that Dr. Khanna filed today, which I received about three minutes ago. That's just a suggestion, Your Honor, but I fail to understand how we're

going to get Mr. Lee here, absent a bench warrant commanding his presence the next time.

THE COURT: Okay. Well, I can have somebody go pick him up and he can wait in jail until I have time to set a bond for him. We'll set this for a hearing on Mr. Khanna's motion, which is his response to the plaintiff's verified motion for sanctions.

THE CLERK: How soon would you like that?

THE COURT: When can we do it? We only need an hour.

THE CLERK: June 25th at 8:30.

THE COURT: June 25th at 8:30.

MR. BECK: Works for me, Your Honor.

DR. KHANNA: 8:30?

THE COURT: I'm going to issue a bench warrant for Mr. Lee's arrest. I will stay it until June 25th at [p.7] 8:30.

DR. KHANNA: May I submit something, Your Honor? My submission is there's no need to have a bench warrant. I'm here undertaking the responsibility to produce him, but the question of the bench warrant --

THE COURT: Mr. Khanna, read the rule.

DR. KHANNA: Your Honor, I know, but my submission is here is an unfortunate circumstance. Court may kindly take into account the situation. And I'm making --

THE COURT: I'm giving -- it's not that he's just -- I'll have him arrested if he does not appear on June 25th. I'm staying the bench warrant until that date. And Mr. Beck, I expect to have, within the next ten days, a motion and affidavit for attorney fees. This was a total waste of everybody's time.

MR. BECK: Yes, Your Honor. I will submit that and make sure I copy Dr. Khanna. Since we have Dr. Khanna entering his appearance on behalf of Mr. Lee, would the Court prefer that I do a notice to reset this for trial?

THE COURT: Absolutely.

MR. BECK: Nothing else on behalf of the plaintiff, Your Honor.

THE COURT: Anything else, Dr. Khanna?

DR. KHANNA: Your Honor, on the day of the 25<sup>th</sup>, [p.8] June, I expect we have a hearing in this case for the contempt motion.

THE COURT: We're set for one hour.

DR. KHANNA: One hour. Yes.

THE COURT: All right.

(End of proceedings.)

[p.9]

**REPORTER'S CERTIFICATE**

The above and foregoing is a true and complete transcription of my stenotype notes taken in my capacity as Official Shorthand Reporter for Division 402, District Court, County of Arapahoe, State of Colorado, at the times and places above set forth.

Dated at Centennial, Colorado, on June 15, 2004.

/s/ \_\_\_\_\_  
Marlene Waite, CSR, RPR

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**APPENDIX K**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 02 CV 384  
Div.: 402**

**[June 25, 2004]**

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2050 S. HAVANA (DTSE), LLC d/b/a	)
KOMART MALL ON HAVANA HEIGHTS	)
and KOMART KOREAN & JAPANESE	)
SUPERMARKET, LLC	)
Plaintiff	)
	)
v.	)
	)
STAN J.H. LEE,	)
Defendant and Counterclaimant	)

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**REPORTER'S TRANSCRIPT**

The Motion Hearing in this matter commenced on Friday,  
June 25, 2004, before the HONORABLE MARILYN  
LEONARD, Judge of the District Court.

This is a transcript of the entire proceeding had on that date.

[p.2]

THE COURT: 2002 CV 384, 2050 South Havana, DTSE, vs. Stan Lee.

MR. BECK: Good morning, Your Honor, Howard Beck, Registration No. 3075, on behalf of the plaintiffs.

DR. KHANNA: Your Honor, my name is Kishan Khanna, No. 34535. I'm appearing on behalf of Mr. Stan Lee.

THE COURT: I will note for the record that Mr. Lee is present.

DR. KHANNA: Yes.

THE COURT: This is a continued contempt hearing. It is also my understanding that Mr. Lee has purged himself of the contempt. Is that true, Mr. Beck?

MR. BECK: Your Honor, one of the comments made by the Court at the April 16th hearing was that Mr. Lee could -- I believe the Court said "take care of the contempt" if he appeared for mediation, we scheduled that mediation following that hearing. It was held on May 3rd, 2004, and Mr. Lee participated pro se in that mediation. The mediator was Michael Travers, assigned from downstairs, and he did participate fully in that mediation.

THE COURT: Was there a resolution reached?

MR. BECK: There was no resolution of any of the issues in the case reached, Your Honor.

[p.3]

THE COURT: All right. Nonetheless, I take it we are not going forward with the contempt hearing.

MR. BECK: Your Honor, with regard to the contempt that was stated in my original verified motion for contempt, based on the Court's comments on April 16<sup>th</sup>, Mr. Lee has certainly purged himself of that contempt. The question is as to what action the Court wants to take because of Mr. Lee's nonappearance on June 3rd, 2004.

THE COURT: I asked you for an affidavit of attorney fees and -- don't stand up, please. We'll be less formal today.

MR. BECK: Thank you, Your Honor.

THE COURT: And I didn't make it clear that what I wanted was an affidavit for the fees you incurred coming out to court when you were prepared to proceed with the hearing that day and Mr. Lee did not appear so we couldn't have a hearing. So I meant the fees for that hour, or whatever period of time it was that you were taken away from other tasks. And what I got from you was an affidavit for fees on the entire contempt matter. And I agree with Mr. Khanna that since there was no contempt, there are no fees at this point in time.

However, there still should be fees for that date and I didn't see any listing for fees on that date.

MR. BECK: Your Honor is correct. I did file an [p.4] application -- a motion and an affidavit for fees for the entire



contempt proceeding, relying on CRCP 107.2, which allow the court to impose costs and reasonable attorney's fees in connection with a contempt proceeding and that those may be assessed in the discretion of the court.

Given the circumstances where Mr. Lee declined to mediate until after the contempt motion had been filed and granted by the Court -- then of course he was very cooperative in mediating -- it seemed to me that the proximate cause of Mr. Lee participating in mediation was in fact the contempt citation, given that he had canceled the mediation that we scheduled for May 7th -- I'm sorry, March 17th -- when Mr. Fried still represented him.

If the Court would like, I can provide a supplemental affidavit for just probably an hour and a half of -- for the time that I spent coming here on the 3rd of June at the aborted hearing because Mr. Lee was not present.

THE COURT: I would like that, Mr. Beck, and those are the fees that I anticipated ordering for you. I also have a Rule 26(b)(1) document filed -- a motion under Rule 26(b)(1), a document filed by Mr. Khanna and a response to that. Mr. Khanna, you're asking for standard discovery; am I correct, or is Mr. Beck correct? Is there something else that has been missing?

[p.5]

DR. KHANNA: Your Honor, the situation, as Your Honor read off, I have received some documents from Mr. Fried, as he was counsel before. I have not been able to locate the specific documents on the basis of which the plaintiff can say that so much payment has been made to him or not made to him, because the contention of my client is this: He was

due certain salaries. That has not been paid to him, so my request to Mr. Beck has been that please let us know if on this issue certain payments have been made. There are other payments which have been made. I'm not asking for that. What I'm saying is specific payments made to him by way of salary or as an operating manager, because he continued to work as an operating manager for a considerably long period of time.

These fees were also agreed in joint meetings of shareholders and members of the LLC. Unfortunately, those payments were not made. And I want some sort -- all he can say is -- all he can say is that he has already notified Mr. Fried. Then I request Mr. Fried to hand over those papers.

THE COURT: Do you know the specific documents Mr. Khanna is requesting?

MR. BECK: Yeah, I think his motion, which I did construe to be a Rule 34 request for protection and production of documents, is reasonably straightforward. I [p.6] can advise the Court that I'm going to treat it as -- unless the Court tells me otherwise -- as a request for production of documents, and deal with it consistent with that rule. I do not recall Mr. Fried, when he was Mr. Lee's attorney, doing a formal request for production of documents. I don't think we're limited to -- would come up against the limitations of the Rule, which I believe it's 20 -- for requests for production, so it seems to me that what I ought to do is respond within the 30 days set forth in CRCP 34, and if I object to any of those requests as being inappropriate, I will do so in accordance with that rule.

Your Honor, I was simply trying to point out that I didn't think we needed Court intervention for what seemed to me to

be a fairly straightforward request for production of documents.

THE COURT: All right. And now, let's go to the jury trial request. Mr. Khanna, it's too late. The time to request a jury trial passed years ago in this case. I have no authority to grant the motion under any circumstances, so that motion for a jury trial is denied.

Okay. We've taken care of attorney fees. The citation is dismissed. You are going to comply with discovery pursuant to Rule 34. You're frowning, Mr. Beck. Is there something --

[p.7]

MR. BECK: No. Oh, no, not at all. I just wanted to -- and the Court probably just took care of this, but you did order that a bench warrant get issued and I need to make sure that gets quashed.

THE COURT: Yes, we'll do that.

MR. BECK: Right.

THE COURT: Actually, I don't think it goes on the computer until today. It would not have gone on the computer until today because there's always an off chance that Mr. Lee might have been picked up before today, so it's not on.

MR. BECK: That was my concern, after today, Your Honor.

THE COURT: Yes, it's not on. And then -- okay. I have-- I don't have, but there evidently has been filed two motions

for a change of judge. Do you wish to argue that motion at this time, Mr. Khanna?

MR. BECK: Your Honor, actually there are three motions.

THE COURT: I don't have that.

MR. BECK: I've got copies.

THE COURT: All right.

MR. BECK: And if it please the Court, I have the copies of two responses that we filed.

THE COURT: I have the responses because they're [p.8] e-filed, and that's a much more efficient way for me to find documents.

MR. BECK: Your Honor, there's one motion which has been filed on the 11th of June.

THE COURT: I don't have that one, sir. Wait a minute. I said that there's some documents that have not been put into the file yet. Let me see if I have them here. I found one -- I have one that's dated June 11th, have June 14th.

MR. BECK: I don't have it.

DR. KHANNA: May I --

THE COURT: Yes, please. All right. I have reviewed the motions. Do you wish to make oral argument at this time, Dr. Khanna?

Dr. Khanna: Your Honor, may I make a submission which is personal to me? I mean, my -- if the Court would grant me the liberty to make a statement, my humble submission is this Your Honor, when I appeared last time in this Court, I felt truly humiliated. There are no words [p.9] to explain my humiliation because I have never, ever been treated in this manner by any court the world over. I've never been treated like this. Your Honor, it may not be anything against you, but then I started investigating as to what is the reason. I went to you through the proceedings of the 21st November 2003, which I have a copy of, which I have given in this motion, Your Honor.

Your Honor, in these proceedings I was horrified to learn that I had been painted as a person who's unruly, who interferes with Judge Hannen.

Why I'm making this preliminary submission, I will come to that. So I am a person who is interfering with the rule of law, is interfering in the judicial process, is filing motion after motion after motion just to interfere with the work which Judge Hannen is doing in another court.

Your Honor, there are several implications of this. I am helping my client to obtain his or her dues in another court. There was no occasion to mention anything about that old proceedings in this court, but let us say it was the purpose of information to this Honorable Court that that was made. Subsequently, so many things have been mentioned against me personally. He said I have a Ph.D. from Bombay. I speak English as second language. My first language is Hindu.

[p.10]

As I said, these are all false allegations, Your Honor. My

Ph.D.s -- I have two Ph.D.s, one Ph.D. from Kent State University. It's not from Bombay. My first language has been English. I've been speaking English faster than other persons. It is my mistake and the reporter have difficulty last time because if you speak fast, sometimes you're not understood, but the implication was that because I speak English as second language, the Court would not be able to understand. And this is most horrifying, Your Honor.

I have returned to Mr. Beck the amount of work, the number of books I have begun in English on law, Constitution of USA, for which I have the greatest regard in writing. Whenever I speak to my students, I say here is the Constitution which guarantees due process. Your Honor, I have written a book on judicial systems of the Third World where I have sat. And I will bring that book and show it to this Court. I have said, follow the system of Colorado Judicial System. I will solve a number of problems. But today, when I appeared before the Court, I am treated as a criminal. You can't speak. Why? Because somebody has spoken against me like this.

Second thing I wish to make, Your Honor, the rule provides for -- I'm sorry. This is an effort in support of the motion. No discussion, Your Honor, because this is [p.11] very embarrassing to me, because I have been brought up, as a lawyer and as a citizen, to honor the judicial system. I do not want to make any oral allegations or anything. I have submitted my affidavit to Your Honor.

Your Honor may take action. My submission is the effort. It very clearly shows what damage has been done to my reputation with this Honorable Court. My qualifications have been totally disrupted. He appears to be from Bombay. My God. I have second Ph.D. from Bombay, first Ph.D. 30 years



ago -- maybe 34 years ago. I got it in Kent State University.

My submission is this: I feel with all the work that has been done on the 21st, there were statements I make -- and I always make sure that I make very, very honest, truthful statements, Your Honor, or they will not carry any weight with this Honorable Court. So Your Honor, the best thing is -- the best thing is, because the rules provide for it, I feel in various ways, also -- I'm proceeding in there as pro bono. I'm trying to help a person who has no money. His money has been eaten away. So my submission is this: I'm already suffering from certain drawbacks. I don't have the resources. I'm helping him. I will have to make extra effort to come to this Court and convince the Court.

My submission is because there has been an [p. 12] evident bias, prejudice, which I would refer to these proceedings only. Your Honor will bear with me, not -- They are very troublesome to me when he makes, "He's Indian." Your Honor, these types of racial bias which has been created against me, Your Honor, this is not true. This is not correct. And therefore I have made a submission: Let this proceeding be sealed. Let this not be an example of how lawyers speak in the Court against another lawyer.

So, Your Honor, to sum it up, I have made the motions. The legal requirements have been completed. Your Honor may make a decision as it suits Your Honor. Your Honor, I do not want to embarrass, because here it's a question of judicial honor, Your Honor, and somehow my conscience does not, under any circumstances, allow me to come up in open court and say something against a judicial officer.

Your Honor, I've been trained to obey the judicial officer as per law. If there's anything wrong, well, we have recourse

to that, Your Honor, but kindly spare me the agony of coming up and repeating these allegations in these motions, Your Honor. And also the minutes are very clear. Your Honor may kindly see the specific paragraphs which I did take care to underline, of course, not in the original, but -- may I, Your Honor?

[p.13]

THE COURT: Yes.

DR. KHANNA: (Tendering a document to the Court.) This is Exhibit A. Your Honor, I've put a slip on each of them.

THE COURT: (Reading.) Mr. Beck?

MR. BECK: Your Honor, let me provide a response to Dr. Khanna's obviously heartfelt comments in two ways. First, I would ask the Court, in the context of the comments that Dr. Khanna made this morning, to review his three motions and to review Mr. Lee's affidavit. They are the most accusatory and -- in my mind -- inappropriate statements that I've ever seen in motions filed, not just because of what they say about me -- I'll get to that in a minute -- but because of what they say about Judge Hannen, this Court, Mr. Fried, just about everything.

I have a very difficult time, Your Honor, squaring in my mind, the tenor of the language of those three motions filed and signed by Dr. Khanna, with his comments here this morning. They are nothing short, in my mind, of -- and I've said that in our two responses and I've tried to summarize the language that was used and the accusations that were used.

None of them have any merit, or if they have merit, the



factual predicate isn't there. I'm accused time and time again of colluding with Mr. Fried. No facts, no [p.14] evidence, no dates, no times, no documents, no anything. I'm accused of making slanderous -- of making inappropriate comments again and again and again in all three motions.

For whatever it's worth, Mr. Fried is falsely accused of having been allowed to withdraw as counsel for Mr. Lee because of a conflict of interest and because of collusion with me. That's not true. Mr. Fried was allowed to withdraw because he felt he had an irreconcilable conflict of interest and the Court granted that.

The Court asked me, on April 16th, if I had any objection to that. I had already filed something saying under the circumstances we did not. I really would like, number one, for the Court to take some time to consider the language and the statements made in those three motions, and for that matter, Mr. Lee's affidavit, in the context of what Dr. Khanna had to say this morning.

Number two, I would ask the court to take some time to review the transcripts of the three hearings. I have taken, as the Court, I would suspect, would expect me to do, some time to read those. The November 16th, 2003, hearing was at, I believe, the trial call where we -- Mr. Fried and I -- were trying to explain to the Court what was going on in the case before Judge Hannen.

And I recognize that even today in the three motions and Mr. Lee's affidavit, Dr. Khanna and Mr. Lee [p.15] maintain that Judge Hannen's orders were void. Be that as it may, that's for a different case in a different courtroom. I would ask the Court to review, to the extent that's brought up by Dr. Khanna on behalf Mr. Lee, Judge Hannen's orders of January

9th, 2004, where he found that there was no competent evidence to support Mr. Lee's position.

I think reviewing those transcripts is important. Contextually, the comments that were made on November 21st, 2003, were when Mr. Fried and I were trying to explain to the Court where the other case was and the difficulty that case had -- difficulties that case had encountered. We spent 4 1/2 days on that case on two writs of garnishment, four half-court-days on traverse of garnishment.

The April 16th hearing, which Dr. Khanna does not now refer to -- contextually, again, the question came up as to how long the Court felt we needed for trial. I went on at some length about my client speaking in Korean, and I mentioned that I believed that Dr. Khanna spoke English as a second language. He tells me it's his first language, which I'll accept that, but if the further context of that is reviewed, I don't understand the allegations made in the motion that somehow those comments were racially prejudiced.

I don't even know what race Dr. Khanna belongs [p.16] to. I thought he and I both belonged to the human race, and that's the only race that I have ever considered to be appropriate or inappropriate, but again, the Court needs to review those comments. The Court should review those transcripts, and the last transcript is June 3rd, where in my response, I tried to make it clear that the Court was not summarily interrupting Dr. Khanna or refusing to let him talk. The Court was understandably, I think, angry, upset, concerned, that Mr. Lee, who had been served with an alias citation for contempt in this courtroom on April 16th, couldn't be here. And Dr. Khanna explained that he had started another job and he'd asked Dr. Khanna to represent him.

Be that as it may, I thought the Court -- this is just my personal opinion -- in issuing a bench warrant but staying it until today, was doing that for the purpose of having Mr. Lee appear as required by the rules, as required by the contempt citation. And the Court has disposed of that as the Court saw fit this morning.

Again, I've asked that the Court strike portions of all three of the motions for the reasons stated in my responses. I think that either under Rule 11 or Rule 12, they're inappropriate, they're scandalous, and they need to be stricken. I will let the Court deal with that. That is the Court's prerogative.

[p.17]

Let me speak, as Dr. Khanna did, briefly to the standards for disqualification. First of all, we have an affidavit for only one of the three hearings. That is the April 16th hearing. We have no affidavit, as required by Rule 97, for either the November 2003 or the June 3rd hearing. We do have the transcripts, and that's why I think it would be helpful for the Court to review them, or if it has reviewed them, to take those into consideration.

Secondly, the standard is not simply making allegations of opinions or conclusions. I cite in our case -- I'm sorry -- I cite, in our response, a recent case, Prefer vs. PharmNetRx, L.L.C., a Texas case which is four years old, where our Court of Appeals says -- and this is a Rule 97 motion, "A motion which merely alleges opinions or conclusions, unsubstantiated by facts supporting a reasonable inference of actual or apparent bias and prejudice, is not legally sufficient to require disqualification."

Well, we've got one affidavit, three hearings; and I think, based on the transcripts, there really is no sound basis whatsoever for the Court to disqualify herself in this case. As I said in my letter to Dr. Khanna in response to his, and attached to my first response, I believe as Exhibit B, I am impressed by his credentials. The discussion on April 16th, which he was then referring [p.18] to, had to do with how long this case would take for trial. That was the only context.

I did advise the Court, as I believe I'm required to do, that my clients have incredible difficulties with English, and I felt that Dr. Khanna, for whatever reason, did; that the proceedings might be affected, also, by Dr. Khanna, but that was not because he's trained here or trained in India or trained anywhere, it's because we're going to have to have an interpreter, and that interpreter is going to have to interpret to and from Korean.

We don't need an interpreter for Mr. Lee. He went through 4 1/2 days of hearings in front of Judge Hannen without one. And we certainly do not need an interpreter for Dr. Khanna, and hopefully we don't need one for me, but my clients do need one, and that is going to slow down the process. And that was the only context that the Court, I think, had, as I recalled, only should the matter be set for three days. And I argued it was a five-day trial. It needed to be a trial -- it was a trial to the Court, which was confirmed this morning. And in my mind, five days was appropriate. I can't count the number of times I've exceeded a time set because I told the court I needed a half an hour and two hours later, the court was upset with me.

That's the context in which I made those [p.19] comments. They certainly had no other motivation then and they have no

other motivation in November, and they have no other motivation now.

Finally, the critical nexus isn't what I said or what Mr. Fried said in November, or what anybody else said. The critical nexus is, was the Court biased because of those comments? There's nothing in the transcripts that would indicate that the Court was biased by those comments and, as I said in my letter to Dr. Khanna, I have no doubt that if I said something in open court -- I and Mr. Fried said something inappropriate in open Court, that this Court would admonish us immediately. The Court was present and did not do so, and I believe that's because the Court felt that, contextually, our comments were appropriate.

THE COURT: Let me just say, in general, that I would prefer attorneys set hearings and trials for longer than they need, as opposed to shorter. I think in fact, if you are right, Dr. Khanna, and if this trial can be concluded in three days, no one will be happier than I, but I would prefer to have it set for five days and use three, than have it set for three and need five, because I will have other matters set on my docket. It will be a problem for me to try to find additional time. I prefer to do trials and hearings at one setting so that there's no continuity lost.

[p.20]

Also, let me say that I have reviewed the documents presented by Dr. Khanna. I believe that it is most appropriate for me to prepare a written order. you will have a written order by July 16<sup>th</sup>.

MR. BECK: 16th, did you say, Your Honor?

THE COURT: Yes.

DR. KHANNA: Your Honor, as I mentioned in this motion, what I'm afraid of is this: that just as the contempt motion has been filed against my client -- I keep on going back and forth to the other end of the world. In fact, on 16 July, I will not be in Colorado, Your Honor. I will be somewhere, maybe Bombay or somewhere, so I'm worried what's going to happen is if I do not appear then, there will be a contempt motion on me.

THE COURT: I don't require an appearance on that date. I'm just giving myself a deadline, Dr. Khanna, to get an order out to you. I prefer to give myself deadlines, and give them on the record so that you're not just waiting and waiting and never knowing when you're going to get an order.

DR. KHANNA: I appreciate, but I'm talking about the other hearings, because this is -- this appears to be the pattern, because -- as I expressed in this motion for [p.21] contempt, is concern Mr. Lee is in California, and evidently does not have the money to come. I have a similar situation. It may be looking like the same situation, about finding funds, Your Honor. I can go for a case out of state and come back, but I'm not too rich a person. Sometimes I may not be able to come back in the state, so my submission is that due regard will need to be given that I'm not available on a certain date, and no such contempt motions should be moved against me for nonattendance. This is all that I'm trying to say.

THE COURT: There are no contempt motions presently scheduled, are there, Mr. Beck?

MR. BECK: Your Honor, the reason I filed a contempt citation against Mr. Lee was because the Court ordered, on



November 21st, if mediation wasn't conducted, a sanction would be imposed. The situation I faced was if we came back into court and I hadn't done something to make that happen, that the Court would look at me and say, Mr. Beck, read my order. You didn't do anything. You're wrong. That's the only reason I did it. I have no intention, as of today, of citing Dr. Khanna for contempt or asking the Court to cite him for contempt. And there's nothing, nothing in this file, that would indicate, other than significant and continuing concern over the allegations made in his submissions -- his motions. But I [p.22] have no -- as of this morning, I have not and do not intend to file any requests that the other attorney be held in contempt.

**THE COURT:** A motion for contempt is prepared by an attorney's office, along with a citation indicating a date for the return and the -- and a place for an order to be signed by the court. The date must be more than 20 days in advance. And they are, by rule, allowed to be filed ex parte. At this point in time there are no contempt motions filed.

Mr. Lee was served in Court with the last contempt motion. He knew the date. My frustration with you the last time, Dr. Khanna, is that you seemed to disregard that portion of the rule requiring, demanding, your client's appearance.

And frankly, that is just not available under the rule. That is why there was a citation -- or a failure to appear order entered; and, also, out of deference to you and your client, I did not have that order executed at that time. So I'm not sure what your concern is. There are no contempt motions pending. There are no hearings pending at this time. A trial in this matter to be set would have to be set after conferring with you regarding available dates. So there will be nothing filed or set at this point in time, now that you are counsel of

record, without your [p.23] knowledge or approval, absent some future contempt matter, and I'm not going to limit that, pursuant to the rules. Now, is there a trial set?

MR. BECK: Your Honor, that was, I guess, my last piece of business, is I'd like to get a trial date. We do not have a trial date. The Court may recall on June 3rd, although it was a little confusing -- but certainly on April 16th you indicated you wanted to defer that, presumably, until today. I brought my calendar. I'm sure Dr. Khanna did, as well.

THE COURT: Dr. Khanna, do you have your calendar with you?

DR. KHANNA: I have it, Your Honor, but there is no actual date specified. The only thing is going to file a motion to set and notice to set.

THE COURT: We'll set it now while everyone is here so no one can claim that he does not have notice. I need five days. It's a court trial.

THE CLERK: The only days that are looking good are the week of January 10th and the week of June 20th.

THE COURT: Of next year?

THE CLERK: Next year.

MR. BECK: January 10th will be fine for the plaintiffs, Your Honor.

DR. KHANNA: What was the June date again?



[p.24]

THE CLERK: June 20th.

THE COURT: June 20th, 2005, or January 10th 2005.  
Which date is better, Mr. Khanna?

DR. KHANNA: Yes, Your Honor. June 20th of 2005.

THE COURT: How does that work for your client and you, Mr. Beck?

MR. BECK: It works. It's just so far out. I understand the Court's congestion. I'm not sure I understand why the January 10th date may not work for defendant and defendant's counsel.

THE COURT: I don't require people to tell my why they don't work.

MR. BECK: It's June -

THE CLERK: June 20th, 2005, at 8:45 and the status on December -

THE COURT: No, not December.

THE CLERK: I'm sorry. I'm thinking of the December date.

THE COURT: Ten days earlier would be June 10th.

DR. KHANNA: June 10th.

THE COURT: June 10th at 8:15. That's the trial call date.

MR. BECK: We'll get a notice out, Your Honor.

THE COURT: All right. Thank you very much. Mr. Lee will not have to appear for the trial call date, which [p.25] is June 10th.

DR. KHANNA: Thank you.

THE COURT: Now, are there other issues today?

MR. BECK: Mr. Khanna, I have a copy of this transcript. I don't need a second one. Thank you.

THE COURT: Also, Mr. Khanna, I have three motions asking me to recuse. I'm asking you not to file another one at this point in time. I have enough information to make a decision at this point in time. Is there anything else today?

MR. BECK: Not on behalf of the plaintiffs, Your Honor. Thank you very much.

THE COURT: Is there anything else today, Mr. Khanna?

DR. KHANNA: No, Your Honor.

THE COURT: All right. Thank you all for coming in. Now, you people in the back of the courtroom have been very patient, but I think you're in the wrong courtroom.

DR. KHANNA: No, Your Honor, I brought them along because I anticipated my client might have been jailed today.

THE COURT: I see. If he had been jailed today, it would have been because he had been found in contempt, and as either a punitive measure or a remedial measure, he might

have been jailed, but in that event, no bond could [p.26] have been posted. He would have been forced to serve the sentence.

DR. KHANNA: Yes, Your Honor, I understand, but it's a precaution I wanted to take. That's all.

THE COURT: All right.

(End of proceedings.)

### REPORTER'S CERTIFICATE

The above and foregoing is a true and complete transcription of my stenotype notes taken in my capacity as Official Shorthand Reporter for Division 402, District Court, County of Arapahoe, State of Colorado, at the times and places above set forth.

Dated at Centennial, Colorado, on January 26, 2005.

/s/

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Marlene Waite, CSR, RPR

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**APPENDIX L**

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**DISTRICT COURT  
ARAPAHOE COUNTY, COLORADO**

**Court Address: 7325 South Potomac Street  
Centennial, Colorado 80112**

**Case Number: 02CV384  
Div.: 402**

**[Filed July 16, 2004]**

Plaintiff: 2050 S. HAVANA (DTSE)	)
d/b/a KOMART MALL ON HAVANA	)
HEIGHTS & KOMART KOREAN &	)
JAPANESE SUPERMARKET, LLC.	)
	)
v.	)
	)
Defendants: STAN J.H. LEE	)
	)

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**ORDER**

Defendant Stan J.H. Lee has filed three motions seeking recusal from this Court pursuant to the Colorado Code of Judicial Conduct and Rule 97 of the Colorado Rules of Civil Procedure. All three motions contain many of the same allegations, however two of the Motions do not comply with Rule 97 in that there is no supporting affidavit attached.

Those motions will not be considered by this Court.

As to the third motion, Counsel for Mr. Lee has omitted certain facts from the events that took place in Court. Further, this Court takes issue with Counsel's characterization of the events and this Court's demeanor. However, this Court wishes to avoid even the appearance of impropriety and will grant the Motion for Change of Judge.

Prepared in Chambers on July 16, 2004.

By the Court:

/s/ \_\_\_\_\_  
Marilyn Leonard, District Court Judge

A copy of this Order was place in the US Mail, postageprepaid to Counsel for each party on July 17, 2004.

/s/ \_\_\_\_\_

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**APPENDIX M-1**

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**DISTRICT COURT  
ARAPAHOE COUNTY, COLORADO**

**Court Address: 7325 South Potomac Street  
Centennial, Colorado 80112**

**Case Number: 02CV384  
Div.: 402**

**[Filed December 15, 2004]**

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Plaintiff: 2050 S. HAVANA (DTSE)	)
d/b/a KOMART MALL ON HAVANA	)
HEIGHTS & KOMART KOREAN &	)
JAPANESE SUPERMARKET, LLC.	)
	)
v.	)
	)
Defendants: STAN J.H. LEE	)
	)

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**RESPONSE OF PLAINTIFFS TO  
"DEF/COUNT.CLAIM." STAN LEE'S RENEWED  
MOTION FOR JURY TRIAL PURSUANT TO  
C.R.C.P. 38**

Plaintiffs 2050 S. Havana (DTSE), LLC d/b/a/ Komart  
Mall on Havana Heights and Komart Korean & Japanese  
Supermarket, LLC (collectively "Plaintiffs" or "Komart")

respond in opposition to "DEF./COUNT.CLAIM STAN LEE'S RENEWED MOTION FOR JURY TRIAL UNDER RULE 38 CRCP" ("Motion") dated October 27, 2004 and in support hereof submit as follows:

1. Defendant's Motion should probably be considered by the Court in concert with the following:

- a) "DEF. COUNT.CLAIM. STAN LEE'S RESPONSE TO PLAINTIFF'S NOTICE OF TRIAL DATE OF 6TH JULY 2005 PENDING RULE 38 CRCP MOTION FOR JURY TRIAL"
- b) "PLAINTIFFS' REPLY TO DEFENDANT STAN J.H. LEE'S RESPONSE TO NOTICE OF TRIAL"
- c) "DEF. COUNT. CLAIM. STAN LEE'S SUPPLEMENTARY [SIC.] RESPONSE TO REPLY FILED BY PLAINTIFF FOR REVISED 5 DAY TRIAL DATE FROM 6TH JULY 2005"

2. This Motion is actually the Defendant's second tardy request for a jury trial, Defendant's earlier Motion for Jury Trial was filed on or about June 4, 2004. Plaintiffs responded in opposition on June 16, 2004. The Honorable Marilyn Leonard denied the June 4, 2004 Motion.

**Motion for Jury Trial DENIED.**

/s/ \_\_\_\_\_  
12-15-04

---

**APPENDIX M-2**

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**DISTRICT COURT  
ARAPAHOE COUNTY, COLORADO**

**Court Address: 7325 South Potomac Street  
Centennial, Colorado 80112**

**Case Number: 02CV384  
Div.: 401**

**[Filed December 15, 2004]**

---

Plaintiff: 2050 S. HAVANA (DTSE)	)
d/b/a KOMART MALL ON HAVANA	)
HEIGHTS & KOMART KOREAN &	)
JAPANESE SUPERMARKET, LLC.	)
	)
v.	)
	)
Defendants: STAN J.H. LEE	)
	)

---

**PLAINTIFFS' MOTION TO ESTABLISH DEADLINE  
TO FILE CONSOLIDATED MOTIONS PURSUANT  
TO C.R.C.P. 12(f)**

Plaintiffs 2050 S. Havana (DTSE), LLC d/b/a/ Komart Mall on Havana Heights and Komart Korean & Japanese Supermarket, LLC (collectively "Plaintiffs" or "Komart") request that the Court enter its Order that Plaintiffs may file



one consolidated motion pursuant to C.R.C.P. 12(f) "Motion to Strike" on or before Tuesday, November 16, 2004. In support of this request, Plaintiffs allege as follows:

1. Plaintiffs intend to file a request to strike pursuant to C.R.C.P. 12(f) as to several motions and other documents which have recently been filed on behalf of the Defendant, Mr. ~~Stan~~ J.H. Lee, in the within matter by his counsel, Dr. Kishan K. Khanna. Those motions and other documents (including the date that the same were filed) include the following as of the date hereof:

- a) "DEF. COUNT.CLAIM. STAN LEE'S RESPONSE TO PLAINTIFF'S NOTICE OF TRIAL DATE OF 6TH JULY 2005 PENDING RULE 38 CRCP MOTION FOR JURY TRIAL" (filed October 29, 2004)
- b) "PLAINTIFFS' REPLY TO DEFENDANT STAN J.H. LEE'S RESPONSE TO NOTICE OF TRIAL" (filed November 8, 2004)
- c) "DEF. COUNT. CLAIM. STAN LEE'S SUPPLEMENTARY [SIC.] RESPONSE TO REPLY FILED BY PLAINTIFF FOR REVISED 5 DAY TRIAL DATE FROM 6TH JULY 2005" (filed November 9, 2004)

**Motion GRANTED.**

/s/

\_\_\_\_\_  
12-15-04

---

**APPENDIX N**

---

**COLORADO COURT OF APPEALS**

**No. 04CA2675**

**Tr. Ct. No. 02CV284**

**[Filed February 1, 2005]**

---

2050 S. Havana (DTSE) LLC,	)
D/B/A Komart Mall on Havana	)
Heights, & Komart Korean & Japanese	)
Supermarket, LLC,	)
Plaintiff-Appellee,	)
	)
v.	)
	)
STAN J. LEE,	)
Defendant-Appellant.	)

---

**ORDER**

Upon consideration of the motion to dismiss and the response, the Court **GRANTS** the motion and Dismisses the appeal without prejudice for lack of a final order. Further, the Court **GRANTS** the motion for an award of attorney fees and costs. Appellee may file a bill of costs pursuant to C.A.R. 39 in this Court. The Court further **GRANTS** reasonable attorney fees, to be imposed against counsel for the appellant, in an amount to be determined by the district court.

149a

BY THE COURT:

/s/ \_\_\_\_\_  
Casebolt, J.

/s/ \_\_\_\_\_  
Graham, J.

/s/ \_\_\_\_\_  
Rusel, J.

Dated. February 1, 2005

Copies to: Counsel of Record  
Clerk of the District Court

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**APPENDIX O**

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**SUPREME COURT, STATE OF COLORADO  
TWO EAST 14<sup>TH</sup> AVENUE  
DENVER, COLORADO 80203**

**No.05SC168**

**[Filed May 31, 2005]**

<b>Petitioner:</b>	)
	)
STAN J. LEE,	)
	)
v.	)
	)
<b>Respondents:</b>	)
	)
2050 S. HAVANA (DTSE) LLC,	)
D/b/a KOMART MALL ON HAVANA)	)
HEIGHTS, & KOMART KOREAN &	)
JAPANESE SUPERMARKET, LLC.	)
	)

**CERTIORARI TO THE COURT OF APPEALS,  
04CA2675  
DISTRICT COURT, ARAPAHOE COUNTY,  
02CV384**

**ORDER OF COURT**

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 31, 2005.



**In the  
Supreme Court of the United States**

MR. STAN J. H. LEE,

*Petitioner,*

v.

2050 S. HAVANA LLC; KOREAN & JAPANESE  
SUPERMARKET LLC Together Known as KOMART LLCs;  
THE DIANE KATCHEN & BARNEY KATCHEN TRUST,  
*Respondents.*

**On Petition for a Writ of Certiorari  
to the Supreme Court of the State of Colorado**

**RESPONDENTS' BRIEF IN OPPOSITION**

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and Komart Korean and  
Japanese Supermarket, LLC*

## **I. QUESTIONS PRESENTED**

### **A. RESPONDENTS THE DIANE KATCHEN TRUST AND THE BARNEY KATCHEN TRUST**

Respondents The Diane Katchen Trust and The Barney Katchen Trust ("Katchen Trusts") were the landlords under a written lease for commercial property located in Aurora, Arapahoe County, Colorado. The Petitioner, Stan J.H. Lee, personally guaranteed the lease on behalf of the tenant. After the tenant defaulted under the lease, the Katchen Trusts sued the tenant and Mr. Lee in the Arapahoe County District Court, Case No. 01CV222 ("01 Case"). Service was had by serving the chief clerk of Mr. Lee at his principal place of business as authorized under Rule 4, Colorado Rules of Civil Procedure ("C.R.C.P."), which provides in pertinent part as follows:

(e) Personal Service. Personal service shall be had as follows:

(1) Upon a natural person over the age of eighteen years by delivering a copy or copies thereof to the person, or by leaving a copy or copies thereof at the person's usual place of abode, with any person over the age of eighteen years who is a member of the person's family, or at the person's usual place of business, with the person's secretary, bookkeeper, manager, or chief clerk; or by delivering a copy to an agent authorized by appointment or by law to receive service of process.

Petitioner did not answer or respond to the Complaint and as a result, a judgment by default was entered against him. Proceedings in aid of execution on the judgment were



commenced, and during the fall of 2002, a writ of garnishment was issued by the Katchen Trusts against Respondents 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC ("Komart LLCs"), two entities in which the Katchen Trusts claimed that Mr. Lee held an interest. An answer to the writ of garnishment was filed by the Komart LLCs denying that they were holding any money or property belonging to Mr. Lee because the interests attributable to him were held in the name of "RTG-TPD Trust." A traverse thereof was filed by the Katchen Trusts ("Garnishment Proceedings").

On October 3, 2003, after multiple day hearings in which Mr. Lee participated in person and by counsel, the Arapahoe County District Court made findings of fact and conclusions of law finding that Mr Lee was the legal or equitable owner of the LLC interests and awarding the interests in the Komart LLCs to the Katchen Trusts to be applied toward satisfaction of the judgment. These Findings of Fact and Conclusions of Law were reduced to writing on January 9, 2004 (Appendix 1). After filing and denial of post-trial motions in the Trial Court, Mr Lee appealed to the Colorado Court of Appeals. The Colorado Court of Appeals dismissed Petitioner's appeal as untimely (Appendix 2). The Colorado Supreme Court (the Colorado Court of last discretionary review) denied certiorari on May 16, 2005 (Appendix 3).

As relevant to the Katchen Trusts, Petitioner has raised the following issues:

1. (Designated as Issue 3 in the Petition for Writ of Certiorari) Whether the Trial Court's Findings of Fact and Conclusions of Law announced from the bench on October 3, 2003 denied the Petitioner equal protection of the laws and/or due process of law; and

2. (Designated as Issue 4 in the Petition for Writ of Certiorari) Whether the Trial Court's Written Findings of Fact and Conclusions of Law and Order entered on January 9, 2004 were null and void because they were entered more than sixty days after the Trial Court's oral announcement thereof.

The Katchen Trusts raise the following issues relative to the granting or denial of the Petition for Writ of Certiorari ("Petition"):

1. Whether the Petition was filed in a timely manner and if not, whether this Court lacks jurisdiction to grant the Petition; and
2. Whether Mr. Lee has set forth any grounds for granting the Petition.

## **B. QUESTIONS PRESENTED - THE KOMART LLCs**

In February 2002 the Komart LLCs filed suit against Mr. Lee in the Arapahoe County District Court (Case No. 02 CV 384) ("02 Case"). The Komart LLCs' claims against Mr. Lee arose out of acts which occurred during the time that Mr. Lee was their "Operating Manager." Following the resolution of various procedural issues, Mr. Lee filed counterclaims which, generally speaking, relate to sums that he believes were due to him. Trial in the 02 Case commenced before the Honorable Vincent White on July 6 and 7, 2005 and is scheduled to resume and be completed on February 20 and 21, 2006. This is the only trial ever commenced in the 02 Case.

From the filing of the 02 Case and until April 2004, Mr. Lee was represented by Mr. David M. Fried. In June 2004

Petitioner's representation was taken up by Dr. Kishan K. Khanna who remains as his counsel in the 02 Case (and in the 01 Case as well) and who filed the initial Petition in this matter on behalf of Mr. Lee on or about August 29, 2005. Mr. Lee originally filed a Motion for Jury Trial in the 02 Case on June 4, 2004 which was denied by the Honorable Marilyn Leonard as untimely on June 25, 2004. Mr. Lee also filed three separate motions to have Judge Leonard recuse herself. Judge Leonard did not find that she had acted inappropriately or exhibited any prejudice, but nevertheless, recused herself in a July 16, 2004 Order to avoid the appearance of impropriety (Petition, Appendix L, p. 142a).

The 02 Case was thereafter assigned to the Honorable James F. Macrum and on October 27, 2004 Mr. Lee, filed his "Renewed Motion for Jury Trial." The Renewed Motion was denied by Judge Macrum on December 15, 2004 [Judge Macrum is erroneously referred to in the Petition as "Judge Marcus" (p. 20, para. 47)].

Following denial of Petitioner's two tardy Motions for Jury Trial, he filed a Notice of Appeal with the Colorado Court of Appeals on December 22, 2004 (Appendix 5). The Komart LLCs timely moved to dismiss the December 2004 appeal, arguing the appeal as to Mr. Lee's two Motions for Jury Trial was premature under Colorado Rules of Civil Procedure and that Mr. Lee's appeal of an "Order Denying Discovery" was from an order that had never been sought nor entered by any trial court. Furthermore, no "final order" as required by C.R.C.P. 54(b) had been issued by the trial court. On February 1, 2005 the Colorado Court of Appeals dismissed Mr. Lee's appeal and granted attorneys fees in favor of the Komart LLCs and against Mr. Lee and his counsel, Dr. Khanna (Petition, Appendix N, p. 148a). Mr. Lee then sought discretionary review of the dismissal from the

Colorado Supreme Court which denied same, *en banc* on May 31<sup>st</sup>, 2005 (Petition, Appendix O, p. 150a). It is from the May 31<sup>st</sup> Order that Petitioner now apparently seeks relief as to the Komart LLCs.

As relevant to the Komart LLCs, Mr. Lee has raised the following issues:

1. (Designated as Questions 1 & 2 in the Petition). Whether the conduct of Mr. Lee's former counsel or counsel for other parties denied him equal protection and/or due process of law?
2. (Designated as Question 5 in the Petition). Whether an "order of contempt citation and threat ... of arrest ... for refusal to sign the proposed 'global settlement' interfered with the ... judicial process and constituted denial of equal protection and due process rights"?
3. (Designated as Question 6 in the Petition). Whether the "mistakes" committed by Mr. Lee's former attorney resulted in a denial of equal protection and due process rights"?
4. (Designated as Question 7 in the Petition). Whether the "collusive fraud" committed by Mr. Lee's former attorney led to the denial of equal protection of laws and his due process rights?

*Note:* Mr. Lee argues he was wrongfully denied a jury trial in his Petition (Sec. I(f) pp. 20-22) but does not include this claim in his "Questions Presented." The Komart LLCs will include this issue as part of above Issue #3 (Petitioner's Question 6).

The Komart LLC's raise the following issues relative to the granting or denial of the petition:

1. Whether the denial of Mr. Lee's two tardy motions for Jury Trial and of the non-existent order denying "full discovery" were properly dismissed by both Colorado appellate courts as premature attempts to appeal interlocutory orders of the trial court?
2. Whether the conduct of Mr. Lee's former counsel, of a recused judge (who is not conducting trial in the 02 Case and who *never* presided in the 01 Case), and of counsel for other parties, even if improper (which are denied by all of the persons so accused by Petitioner) caused any harm or prejudice to Mr. Lee?
3. Whether Mr. Lee has any grounds to argue lack of opportunity to conduct discovery when his present counsel (Dr. Khanna) entered the 02 Case in June, 2004 (with no order limiting "full discovery" ever entered) and trial commenced in July 2005?
4. Whether settlement discussions conducted by Mr. Lee's former counsel in both the 01 and 02 Cases (with no court intervention other than to require third party mediation) with no settlement reached and no discussion of settlement reported to any court or judge (other than by Mr. Lee) prejudiced him in any manner?

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## **II. RESPONDENTS BRIEF IN OPPOSITION TO STAN J.H. LEE'S PETITION FOR WRIT OF CERTIORARI**

### **A. STATEMENT OF THE CASE AS TO THE KATCHEN TRUSTS**

Following the Trial Court's entry in the 01 Case Garnishment Proceedings of written Findings of Fact, Conclusions of Law and Judgment on January 9, 2004 (Appendix 1), Mr. Lee filed post-trial motions under Rule 59, C.R.C.P. These motions were deemed denied as of March 26, 2004, by virtue of the Trial Court's failure to rule on them within sixty days of filing as required by Rule 59(j), C.R.C.P. This Rule provides:

"The court shall determine any post-trial motion within 60 days of the date of the filing of the motion. . . Any post-trial motion that has not been decided within the 60-day determination period shall, without further action by the court, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and time for appeal shall commence as of that date."

Under Rule 4 of the Colorado Appellate Rules ("C.A.R."), the time for filing a notice of appeal with the Colorado Court of Appeals was forty-five days after the denial of the Rule 59 post-trial motions, or on or before May 10, 2004. Mr. Lee filed his Notice of Appeal on October 4, 2004, which was more than 45 days after his post-trial motions were deemed denied. As a result, the Colorado Court of Appeals dismissed his appeal (Appendix 2). The Colorado Supreme Court denied certiorari on May 16, 2005 (Appendix 3). The Petitioner filed his Petition for Writ of

Certiorari with this Court more than 90 days after the Colorado Supreme Court denied certiorari.

## **B. PETITIONER'S ASSERTED CLAIMS AGAINST THE KATCHEN TRUSTS**

As far as can be determined from a reading the Petition, Mr. Lee's claims as applicable to the Katchen Trusts are that (1) service of process was improper and inadequate; (2) the garnishment hearing was improper because the Court considered issues beyond the scope of those raised in the traverse of garnishment; and (3) the Trial Court's Findings of Fact and Conclusions of Law were not supported by the evidence. Mr. Lee seeks a reversal of the default judgment and a trial de novo.

## **C. STATEMENT OF THE CASE AS TO THE KOMART LLCS**

A brief background of the 02 Case is presented in Komart LLCs "Questions Presented," *supra*. Mr. Lee's arguments are identical to the arguments Mr. Lee made before trial courts in both the 01 and 02 Cases, as well as twice before the United States District Court for the District of Colorado [04-K-1786 (PAC) and 04-F-2308 (BNB)]. Both U.S. District Court cases were dismissed without appeal. Mr. Lee also raised these same claims through two appeals to the Colorado Court of Appeals (04 CA 2077 and 04 CA 2675 - both dismissed), through two Petitions for Certiorari to the Colorado Supreme Court (05 SC 169 and 05 SC 168 - both denied) and through an original proceeding filed with the Colorado Supreme Court under C.A.R. 21 - denied).

The Colorado courts' denial of Mr. Lee's requests for Jury Trial were proper, no order limiting "full discovery"

exists (or ever existed), and appeals were properly dismissed as interlocutory orders under Colorado law and Rules of Procedure.

Six different Judges of the Arapahoe County District Court presided over all or portions of the 01 and 02 Cases and have uniformly denied Mr. Lee the relief he has requested. In addition the Attorney Regulation Counsel of the Colorado Supreme Court has refused to sanction the various counsel (although, as Mr. Lee notes is investigating his present counsel). There is not one shred of evidence before any Colorado Court (or indeed in the Petition) that any attorney acted improperly, nor did any trial court judge or the Attorney Regulation Counsel appointed by the Colorado Supreme Court (C.R.C.P. 251.3). There is no evidence of "collusive fraud" or of improper remarks (which, even if true are not alleged to be directed toward Mr. Lee, but his attorney, Dr. Khanna).

Based upon the foregoing, and specific arguments by the Katchen Trusts (which are adopted as applicable by the Komart LLCs), the Petition should be denied.

#### **D. REASONS FOR DENYING THE WRIT**

##### **1. THE KATCHEN TRUSTS:**

##### **a. THIS COURT LACKS JURISDICTION TO GRANT THE WRIT**

Rule 10 of the Supreme Court Rules ("S. Ct. R.") provides that review on certiorari is not a matter of right but of judicial discretion, and a petition for writ of certiorari will only be granted for compelling reasons.

Mr. Lee has not presented any compelling reason for granting the Writ, but even if he had done so, he did not file his Petition with this Court within ninety days following the denial of his Petition for Writ of Certiorari filed with the Colorado Supreme Court and therefore, this Court lacks jurisdiction to grant the Writ.

The jurisdictional basis for the Petition is stated in the Petition to be "Sections 1983 and 1981 of Title 42" (which is believed to be 42 U.S.C. §§1981 and 1983). These sections, which were not raised in the lower court proceedings, do not confer jurisdiction upon this Court.

This case concerns post-judgment proceedings filed by the Katchen Trusts in order to obtain satisfaction of their October 31, 2001 default judgment against Mr. Lee. After three days of contested evidentiary hearings in which Mr. Lee and Mi Yung Lee, the Trustee of the RTG-TPD Trust were present in person and represented by counsel, the Trial Court, on October 3, 2003, entered oral findings of fact, conclusions of law and judgment, in favor of the the Katchen Trusts, finding that Mr. Lee was the legal and/or equitable owner of the interests. The written findings of fact, conclusions of law and judgment were entered by the Court on January 12, 2004 (the written judgment was signed on January 9, 2003 [sic]), (Appendix 1).

The following represents the timeline of the Orders from which Petitioner Lee appealed:

a. the Trial Court's Findings of Fact, Conclusions of Law and Judgment, the Trial Court's Order Re: Petitioner Stan Lee's Motion for Dismissal of Complaint, and the Trial Court's Order Re: Motions of Mi Yung Lee and Stan Lee Under Rule 52 and Other Rules, are all dated January 9, 2004



(and were entered on January 12, 2004). These Orders resolved all issues pending before the Trial Court.

b. On October 20, 2003, after the Trial Court orally announced its findings of fact and conclusions of law but prior to the written entry of the Orders, Mr. Lee prematurely filed a flurry of post-trial motions, including but not limited to his claim that he had not been properly served with process and that the Trial Court erred by considering issues not raised in the Traverse of Writ of Garnishment. The Trial Court's Orders dated January 9, 2004 denying the prematurely filed post-trial motions are attached as Appendix 4.

c. Mr. Lee filed additional, duplicative Rule 59 Post-Trial Motions on January 26, 2004.

d. Mr. Lee's Motions under Rule 59 were denied or deemed denied under Rule 59(j), C.R.C.P. (assuming that the Motions were not already denied by virtue of the Trial Court's Orders entered on January 9, 2004) 60 days after they were filed, on March 26, 2004.

e. No extensions were sought or granted for filing a notice of appeal.

f. The Trial Court entered a written order denying the January 26, 2004 post-trial motions on August 30, 2004.

g. The Notice of Appeal was filed on or about October 8, 2004.

h. The Colorado Court of Appeals, upon motion filed by the Katchen Trusts, dismissed the appeal as untimely on December 24, 2004 (Appendix 2).



i. Mr. Lee petitioned the Colorado Supreme Court to grant a writ of certiorari directed to the Court of Appeals. The Petition was timely filed and was denied by the Colorado Supreme Court on May 16, 2005 (Appendix 3).

j. Mr. Lee filed his Petition for Writ of Certiorari with this Court on or about August 29, 2005, 105 days after the denial of the Petition for Writ of Certiorari by the Colorado Supreme Court.

28 U.S.C. §2101(c) provides:

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

This Court has held that this 90-day requirement is mandatory and jurisdictional. *Missouri v. Jenkins*, 495 U.S. 33, 45, 110 S.Ct. 1651, 1660 (1990). See also, S.Ct.R. 13: "A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review."

S.Ct.R. 14 sets forth the required contents of a Petition for Writ of Certiorari. Although Mr. Lee seeks reversal of orders entered by the Trial Court in the Garnishment Proceedings in the 01 Case, and although required by S.Ct.R. 13(1)(e)(i and ii), he does not list any of these dates in his

Petition, and did not include in the Appendix the Trial Court's January 9, 2004 Order; the Order of the Colorado Court of Appeals dismissing Petitioner's Appeal; or the Order of the Colorado Supreme Court denying certiorari as part of his Petition for Writ of Certiorari filed with this Court. To make matters even more confusing, Mr. Lee is attempting to seek review of orders entered in two cases – the 01 Case and the 02 Case in the same petition, even though the 01 Case and the 02 Case are unrelated (although they do concern different aspects of the same project). Hence, the Clerk of this Court could not determine that the Petition was jurisdictionally untimely and consequently accepted the Petition for filing contrary to S.Ct.R. 13(1).

Mr. Lee's failure to file his Petition with this Court within ninety days after the Colorado Supreme Court denied certiorari on May 16, 2005 deprives this Court of jurisdiction and the Petition should be denied. Mr. Lee's Petition is also untimely as to the Komart LLC's as discussed in Section 2(b) below.

#### **b. THERE WAS NO ERROR BY THE LOWER COURTS**

Even if this Court had subject matter jurisdiction over the Petition, there is no compelling reason to grant the Petition because the Colorado Court of Appeals and the Colorado Supreme Court did not commit error, and none has been even alleged by Mr. Lee.

The Colorado Court of Appeals dismissed his appeal because it lacked jurisdiction due to his failure to file his Notice of Appeal within forty-five days after his post-trial motions were denied or deemed denied in the Trial Court. In *Arguelles v. Ridgeway*, 827 P.2d 553, 555 (Colo.App. 1991),

the Colorado Court of Appeals held that the sixty day time limit for a trial court to rule on a post-trial motion is jurisdictional. Likewise, the failure to file a notice of appeal with the Colorado Court of Appeals within forty-five days after the post-trial motions were deemed denied is a fatal jurisdictional defect.\* *Hussein v. Regents of University of Colorado, University of Colorado at Colorado Springs*, --- P.3d ---, 2005 WL 1176071 (Colo.App.,2005).

Certiorari review by the Colorado Supreme Court is discretionary. Rule 49, C.A.R., provides that "a review in the Supreme Court on writ of certiorari. . .is a matter of sound judicial discretion and will be granted only when there are special and important reasons therefor." Mr. Lee has not alleged an abuse of discretion by the Colorado Supreme Court in declining to review the Court of Appeals' dismissal, and has not raised any error by the Court of Appeals in dismissing his appeal to that Court.

S.Ct.R. Rule 10 provides, in pertinent part:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The Petition alleges, at best, a misapplication of properly stated law by the Trial Court, and alleges no error by the Colorado Court of Appeals or the Supreme Court. Other than a more or less generic and ubiquitous reference to due process and equal protection violations, Mr. Lee has not alleged a violation of federal law. He has not cited any authority to show that the lower courts either decided an issue of federal law in a way that conflicts with other state or federal decisions or that there is an issue of federal law that has not been settled by this Court. Therefore, there are no compelling reasons to grant this Petition.

## **2. THE KOMART LLCs:**

As Respondents the Katchen Trusts note in Section D(1)(a) above, S. Ct. R. 10 sets forth the considerations this Court will follow in reviewing the Petition. As is pointed above and as is elaborated below this Petition does not implicate any "federal question." The Petition is nothing more than another attempt by the Petitioner to have, now, this Court, correct Petitioner's own delays in properly prosecuting the 01 and 02 Cases under Colorado law and procedure. Having been consistently and uniformly rejected by Colorado

state courts at all levels and having twice had these same arguments turned down by the United States District Court for the District of Colorado, Petitioner now repeats before this Court the very same arguments. There are no "federal questions" presented by Petitioner other than his bare repetitive recitation of federal statutes and constitutional provisions, nor is there any conflict between the rulings of Colorado courts and any other state or federal court, including this Court (S. Ct. R. 10(b)).

**a. MR. LEES'S TWO MOTIONS FOR JURY TRIAL  
WERE UNTIMELY AND UNAPPEALABLE  
INTERLOCUTORY ORDERS**

Pursuant to C.R.C.P. 38(b), any party requesting a jury trial on any issue triable by a jury must file "a demand therefore at any time after the commencement of the action but not later than ten days after the service of the last pleading directed to such issue...." The last pleading asserting claims in this case was filed on December 6, 2002, eighteen months before Mr. Lee filed his first motion for jury trial. Because both motions for jury trial were untimely, they were properly denied by the Trial Court.

Moreover, Mr. Lee made no attempt to comply with C.R.C.P. 54(b)'s requirement that either Order be certified as final for the purposes of appeal. C.R.C.P. 54(b) provides the mechanism for considering whether or not a judgment is "final" for purposes of appeal. *Steven A. Gall, P.C. v. District Court*, 965 P.2d 1268, 1270 (Colo. 1998). Rule 54(b), C.R.C.P., provides as follows:

**Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim,

counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims, or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Furthermore, any attempt to obtain a Rule 54(b) order would have been futile. A final judgment subject to an appeal must determine at least one issue or claim presented and also must determine each remedy that has been requested. See *Virdanco Inc. v. MTS Intern.*, 791 P.2d 1236 (Colo. App. 1990) (appeal dismissed for lack of a final judgment even when a C.R.C.P. 54(b) certification has been entered by the lower court). Here, Judge Macrum (and earlier Judge Leonard) was simply ruling on procedural motions (very tardy requests for jury trial) and there were no final judgments or orders subject to appeal as *none* of the issues in this case have been disposed of or decided. See generally, *Harding Glass Co., Inc. v. Jones*, 640 P. 2d 1123 (Colo. 1982).

The Komart LLCs suggested in their Motion to Dismiss Appeal before the Colorado Court of Appeals that if Mr. Lee desired to assert that he is entitled to a jury trial, his pre-trial remedy was to file an Original Proceeding with the Colorado Supreme Court pursuant to C.A.R. 21. In fact, Mr. Lee did



so on or about February 15, 2005 and his Original Proceeding was denied on or about February 18, 2005. Mr. Lee made no attempt to seek review of such Colorado Supreme Court Order and his defacto attempt to do so now is; jurisdictionally untimely. S.Ct.R 13 and 28, U.S.C. § 2101(c).

The Komart LLCs have no idea what Mr. Lee is addressing in his Petition to the extent that it relates to "limitation on full discovery" (Petition, p. 20, paras. 41-43, *passim*). Attached to the Petition at Appendix M-2 (pp. 146a-147a) is Mr. Lee's Motion to Establish Deadlines to file consolidated Motions Pursuant to C.R.C.P. 12(f), granted on December 15, 2004, *nunc pro tunc*, November 11, 2004. Therefore, and regardless of whether Mr. Lee is mistaken or simply dilatory, there is no Order relating to discovery to be appealed. Even if there were such an order, the arguments made above with regard to the lack of a final appealable Order pursuant to C.R.C.P. 54(b) would be equally applicable. Furthermore, Mr. Lee offers no explanation as to why, subsequent to the Entry of Appearance in June, 2004 Mr. Lee's new counsel made no attempt to conduct *any* discovery on his behalf for 13 months (trial in the 02 Case commenced on July 6, 2005). (*See, generally*, C.R.C.P. 16, 26 and 30-37).

**b. NEITHER MR. LEE'S FORMER COUNSEL,  
VARIOUS JUDGES WHO HAVE HEARD PARTS OF  
THE 02 CASE NOR COUNSEL FOR OTHER  
PARTIES HAVE VIOLATED HIS RIGHTS TO  
EQUAL PROTECTION OR DUE PROCESS OF LAW.**

Scattered throughout the Petition are contentions that numerous attorneys and judicial officers have violated Mr. Lee's Constitutional rights. There are, however, few specifics. To the extent Mr. Lee argues counsel made

inappropriate comments against his *attorney*, Dr. Khanna, such is not the case (compare the “excerpt” at para. 31, page 17 of the Petition with the actual transcript, Petition, Appendix “D”, pp. 79(a)-99(a)). To the extent these comments are directed toward Judge Leonard (who recused herself on July 16, 2004), compare Mr. Lee’s allegations with the transcript above and the further transcripts attached to the Petition at Appendixes “J” (pp. 112(a)-119(a) and “K” (pp. 120(a) - 138(a)). Furthermore, whatever allegations Mr. Lee makes against others, they are not addressed to Judge White who is in the middle of trial in the 02 Case (scheduled to be completed in late February, 2006).

Mr. Lee cites at pp. 20-21 of his Petition (see I(f)), *In Re Marriage of Gance*, 36 P. 3d 114 (Colo. App. 2001) and *Guevara v. Foxhoven*, 928 P. 2d 793 (Colo. App. 1996) for the proposition that an appellate court has the authority to relieve a party from fraud, or “collusion” under certain circumstances. However, unlike in those cases, this is not an independent equitable action. See *Gance*, 36 P.3d at 116, *Guevara*, 928 P.2d at 794-95.

**c. CONTEMPT PROCEEDINGS AGAINST MR. LEE  
WERE NOT THE RESULT OF “COLLUSIVE  
FRAUD,” WERE REQUIRED TO COMPEL HIM TO  
ATTEND THIRD PARTY MEDIATION (NOT TO  
SETTLE) ONLY IN THE 02 CASE, AND WERE IN  
ANY EVENT TERMINATED WITHOUT HIS BEING  
HELD IN CONTEMPT (WHEN HE FINALLY  
PARTICIPATED IN A MEDIATION BEFORE A  
THIRD PARTY NEUTRAL).**

Much is made by Mr. Lee of the Contempt “Order to Show Cause” obtained by Komart LLCs’ Counsel in the 02 Case when he refused to participate in mediation before the



Colorado Office of Dispute Resolution (*see Petition*, pp. 14-17, para. 14, paras. 20, 29, 36 *passim*). It was Mr. Lee's refusal to participate in mediation and not to engage in the court-ordered process which resulted in the order to show cause, not his refusal to enter into some type of "global settlement" Colorado along with other jurisdictions prohibits settlement discussions from being introduced (C.R.E. 408). Only Mr. Lee has ever discussed the failed mediation (or other settlement discussions) before this or any other court. Although Mr. Lee argues he was required to settle (and was the subject of a contempt proceeding when he "refused to sign on the bottom line" (*Petition*, para. 36, p. 18), such was not the case) (*See Petition*, Appendix H-1 at 107a).

Nor were the 01 and 02 Cases ever "linked by some strange argument" (*Petition*, paras. 14-15, p. 14). In fact, although counsel made joint efforts to settle both cases, the mediation which Mr. Lee failed to attend was *only* in the 02 Case. (*See, Petition*, Appendixes E, F, G & H). Voluntary discussions among counsel in these two cases towards a settlement do not demonstrate "collusive fraud" and in any event have never been the subject of any pleading or proceeding.

**d. COUNSEL'S FILING WITH THE COLORADO ATTORNEY REGULATION COUNSEL WERE REQUIRED BY THE RULES OF PROFESSIONAL CONDUCT AND WERE NOT (AND HAVE NOT BEEN FOUND TO BE) AN ATTEMPT TO INTIMIDATE DR. KHANNA.**

Mr. Lee also asserts that the Colorado Office of Attorney Regulation (established by the Colorado Supreme Court) acted to deprive him of his Constitutional rights (*see Petition*, paras. 75-77, pp. 27-28 where he complains of "callous persecution

by them of an innocent client and the Attorney Regulation Counsel appeared to favor such attorneys" *id*, para. 77).

Mr. Lee does not inform this Court that in November 2004 Dr. Khanna filed a request for investigation against the three named attorneys, and that the Attorney Regulation Counsel took no action. Komart LLCs' counsel Howard Beck (and none other) did file a request for investigation in early 2005 as to Dr. Khanna and as Mr Lee concedes (*Id*, para. 75) that investigation continues. The relevant provision of Rule 8.3 of the Colorado adopted Rules of Professional Conduct provides as follows:

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

For Mr. Lee to assert that Komart LLCs' counsel filed this request for any improper purpose is not factually supported or supportable.

### CONCLUSION

The untimely filing of the Petition for Writ of Certiorari has deprived this Court of jurisdiction to grant the Petition under S.Ct.R 13. Further as to all Respondents there is neither a legal nor factual basis to grant the Petition. As to the Katchen Trusts the considerations stated in Supreme Court Rule 10 are lacking. As to the Komart LLC's, any attempted relief in the 02 Case is premature as that case is still in trial with no error demonstrated through competent documents or

court records to show Mr. Lee's constitutional rights have been or are being violated.

Accordingly, the Petition should be denied.

Respectfully Submitted,

HOCHSTADT, STRAW, STRAUSS &  
SILVERMAN, P.C.

Richard S. Strauss

*Counsel of Record*

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(303) 750-1568  
(303) 750-7530 fax

*Counsel for Respondents,*

*2050 S. Havana St. (DTSE), LLC and  
Komart Korean and Japanese  
Supermarket, LLC*

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**APPENDIX 1**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Englewood, Colorado 80112**

**Case No. 01CV222  
Div.: 4  
[Filed January 9, 2003]**

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THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually; and	)
eKOMART.COM, INC., a Colorado corp.	)
Defendants	)
	)
KOMART KOREAN AND JAPANESE	)
SUPERMARKET, LLC; and	)
2050 S. HAVANA ST. (DTSE), LLC	)
Intervenors	)
	)
RTG-TPD TRUST	)
Additional Party	)

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## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

THIS MATTER CAME ON TO BE HEARD for a hearing on the Plaintiffs' traverse to the Answers to Writs of Garnishment issued February 3, 2003, and served on 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC. The answers stated that the garnishees did not owe any monies or other personal property to Defendant Stan Lee. Plaintiffs have asserted that the garnishees are holding monies for distribution to Stan Lee as owner of membership interests in the garnishees. Plaintiffs request that this Court order that the money held by garnishees be paid over to Plaintiffs as judgment Creditors of Stan Lee.

RTG-TPD Trust ("The Trust") asserts that it owns membership interests in both limited liability companies and it is entitled to distribution from the garnishees free of any claims of the creditors of Stan Lee.

Hearings were held on July 21, 2003; August 21, 2003 and October 2, 2003. Plaintiffs appeared in person at the hearings on July 21, 2003 and August 21, 2003, and were represented at all said hearings by Richard S. Strauss, of the law firm of Hochstadt, Straw, Strauss & Silverman, P.C.; Defendant Stan J.H. Lee appeared in person at said hearings and was represented by David Fried, Esq. at the hearings on July 21, 2003 and August 21, 2003, and by David Fried and Kishan Khanna, Esq. at the hearing on October 2, 2003; Garnishees 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC were represented at said hearings by Howard Beck, Esq. of the firm Beck & Cassinis, P.C.; and Miyung Lee, Trustee of the RTG-TPD Trust appeared in person at the hearings on July 21, 2003 and

August 21, 2003 and was represented at all three hearings by Kishan Khanna, Esq.

THE COURT, having heard the testimony of and having had the opportunity to observe the demeanor and credibility of the witnesses, having reviewed the documents admitted into evidence and the legal briefs submitted by the Plaintiffs and the Trust, having heard the statements and arguments of counsel and being fully advised in the premises, DOTH MAKE THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER:

#### I. FINDINGS OF FACT

1. The evidence before the Court established that the Trust was established by a written Irrevocable Trust agreement dated May 18, 1999. (Exhibit 3) Stan Lee was both the Settlor of the Trust and the Trustee. The signature of Stan Lee, as Trustee, is dated October 30, 2001.

2. The Trust document (Exhibit 3) lists the assets and property which were transferred to the Trust. Membership interests in 2050 S. Havana St. (DTSE), LLC and Denver California Market, LLC d/b/a Komart Korean and Japanese Supermarket, LLC (Hereinafter referred to as the "limited liability companies") are not listed among the assets transferred to the trust.

3. The 1999 and 2000 partnership income tax returns for the limited liability companies do not indicate that the Trust was a member, and no schedule K-1 was prepared for the Trust for said years.

4. The limited liability company Operating Agreements were not signed by the Trust, and do not mention the Trust.

5. The 2001 returns of partnership income dated April 22, 2002, for 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC contain a schedule K-1 for the Trust, indicating that the Trust had a 15% interest in 2050 and a 17.65% interest in Komart.

6. No credible evidence has been introduced showing that membership interests in the limited liability companies were assigned or otherwise transferred at any time to the RTG-TPD Trust.

7. The Trust did not file income tax returns for the years 1999, 2000, 2001 and 2002 until April, 2003. See Trust Exhibits M - 1, M - 2, M - 3 and M - 4.

8. In April, 2003, Lee also attempted to file amended income tax returns for the limited liability companies, even though he was no longer operating manager for those limited liability companies. See Trust Exhibits I-1, I-2, I-3 and I-4. These unsigned amended returns have handwritten Schedule K-1's for the Trust, whereas all other parts of these returns are typewritten.

9. No evidence has been introduced showing that any consideration was give for the transfer of any membership interests in the limited liability companies to the Trust.

10. Indeed, the evidence indicates that Lee, and no the Trust, received interests in the limited liability companies in consideration for his services rendered on behalf of those limited liability companies.

11. In paragraph 46 of his counterclaim in the case of 2050 S. Havana (DTSE), LLC versus Lee, Case No. 02CV384, Arapahoe County District Court, Lee admits that



the operating agreement for said limited liability company provided for him to serve as project manager for the Denver project and to receive a percentage interest in the shopping mall, supermarket and restaurant.

## II. CONCLUSIONS OF LAW

BASED UPON THE ABOVE FINDINGS OF FACT,  
THE COURT CONCLUDES AS FOLLOWS:

1. Stan Lee did, indeed, receive an ownership interest in the limited liability companies, and those interests have never been transferred to the Trust.

2. Stan Lee owns a 15% interest in 2050 S. Havana St. (DTSE), LLC and a 17.65% interest in Komart Korean and Japanese Supermarket, LLC.

3. Plaintiffs have sustained their burden of proving that Stan Lee is the owner of the membership interests in 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC.

4. As a result, any distributions payable by those limited liability companies must be paid to Plaintiffs as Lee's judgment creditors. Such payments are to be made at the address designated by Plaintiffs in writing.

5. Based upon the above, the Court need not address Plaintiffs' arguments that the Trust was a revocable trust or that the trust is void under the Rule Against Perpetuities.



**IT IS THEREFORE ORDERED, ADJUDGE AND DECREED:**

1. Plaintiffs are the owners of the respective interests in the limited liability companies, to wit: 17.65% interest in and to Komart Korean and Japanese Supermarket, LLC, and 15% interest in and to 2050 S. Havana St. (DTSE), LLC. The limited liability companies shall note Plaintiffs' ownership of record. Said membership interests are transferred to Plaintiffs toward partial satisfaction of their judgment pursuant to the Court's previous Order of December 16, 2002.

2. The Intervenor's Motions to interplead funds, filed respectively on February 13, 2003 and September 18, 2003 are hereby GRANTED.

3. The funds so deposited to the Registry of the Court shall be paid and disbursed to Plaintiffs, in care of Hochstadt, Straw, Strauss & Silverman, P.C., 2043 York Street, Denver, CO 80205 and credited against the Plaintiffs' judgment against Defendant Stan Lee.

DONE AND SIGNED in Open Court this 9<sup>th</sup> day of January, 2003.

**BY THE COURT:**

/s/

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Hon. J. Mark Hannen  
DISTRICT COURT JUDGE

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**APPENDIX 2**

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**COLORADO COURT OF APPEALS**

**No. 04ca2077  
Tr. Ct. No. 01CV222**

**[Filed December 24, 2004]**

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Diane Katchen Trust and	)
Barney Katchen Trust,	)
Plaintiff-Appellees,	)
	)
v.	)
	)
Stan Lee and RTD-TPD Trust,	)
Mi Yung Lee Trustee,	)
Defendant-Appellants,	)
	)
and	)
	)
2050 S. Havana Street LLC, and	)
Komart Korean & Japanese Supermarket,	)
Intervenor-Appellees.	)
	)

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Upon consideration of the motion to amend the caption,  
the Court GRANTS the motion.

Upon consideration of the motion to dismiss the appeal as  
untimely filed, the Court GRANTS the motion. The trial court

must rule upon a motion for post-judgment relief pursuant to C.R.C.P. 59 within 60 days. C.R.C.P. 59(j). If the trial court fails to rule on the motion within 60 days, it is deemed denied by operation of law and the time for filing the notice of appeal commences. A trial court lacks jurisdiction to rule on a post-trial motion after the 60<sup>th</sup> day; such a ruling is void. Canton Oil Corp. v. District Court, 731 P.2d 687 (Colo. 1987); Anderson v. Molitor, 738 P.2d 402 (Colo. App. 1987).

Therefore, the Court finds that, at the latest, the C.R.C.P. 59 motion was deemed denied by operation of law on March 9, 2004. Thus, a notice of appeal should have been filed on or before April 23, 2004. C.A.R. 4(a); Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980). However, appellant's notice of appeal was not filed until October 8, 2004, and it does not appear that any extension of time for appealing was ever granted. Moreover, this Court has authority to grant only a 30-day extension of time to file a notice of appeal, and that period expired on May 24, 2004. Therefore, this Court is without jurisdiction over the appeal.

BY THE COURT:

Rothenberg, J.  
Webb, J.  
Piccone, J.

Dated: Dec. 24, 2004

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**APPENDIX 3**

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**SUPREME COURT  
STATE OF COLORADO  
TWO EAST 14<sup>TH</sup> AVENUE  
DENVER, COLORADO 80203**

**Case No. 05SC169**

**[Filed May 16, 2005]**

STAN J.H. LEE and	)
RTG-TPD TRUST,	)
Petitioners	)
	)
v.	)
	)
THE DIANE KATCHEN TRUST	)
and THE BARNEY KATCHEN TRUST	)
Respondents	)
	)

**CERTIORARI TO THE COURT OF APPEALS,  
04CA2077  
DISTRICT COURT, ARAPAHOE COUNTY,  
01CV222**

**ORDER OF COURT**

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

10a

**IT IS THIS DAY ORDERED** that said Petition for Writ of Certiorari shall be, and the same hereby is, **DENIED**.

**BY THE COURT, EN BANC, MAY 16, 2005.**

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**APPENDIX 4**

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**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Centennial, Colorado 80112**

**Case No. 01CV222  
Div.: 206  
[Filed January 9, 2004]**

---

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually; and	)
eKOMART.COM, INC., a Colorado corp.	)
Defendants	)

---

**ORDER RE: MOTIONS OF MI YUNG LEE AND  
STAN LEE UNDER RULE 52 AND OTHER RULES**

The motions of Mi Yung Lee and Stan Lee under Rule 52 Read with Rule 59(3) and Rule 62(a) (b) & (c) C.R.C.P. on Findings of Court of 10/03/03 on Plaintiff's Notice of Hearing Dated June 6 & 9, 2003, are DENIED.

Plaintiffs' request for an award of attorney fees and costs incurred with respect to these motions is DENIED.

SO ORDERED.

Dated this 9th day of January, 2004.

BY THE COURT:

/s/ \_\_\_\_\_  
J. Mark Hannen  
District Court Judge

**DISTRICT COURT ARAPAHOE COUNTY  
STATE OF COLORADO  
7325 South Potomac Street  
Centennial, Colorado 80112**

**Case No. 01CV222  
Div.: 206  
[Filed January 9, 2004]**

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually; and	)
eKOMART.COM, INC., a Colorado corp.	)
Defendants	)
	)

**ORDER RE: DEFENDANT STAN LEE'S MOTION  
FOR DISMISSAL OF COMPLAINT**

This Matter comes before the Court for consideration of the motion of defendant Stan Lee ("Lee") for dismissal of the complaint. The Court concludes as follows:

1. Lee's Motion is based on C.R.C.P. 12(b)(2) to (4). However, C.R.C.P. 60(b) specifies the procedure for setting aside a default judgment.
2. A motion to set aside a judgment on the basis of fraud,



misrepresentation, or other misconduct of an adverse party must be made within six months of the entry of judgment. C.R.C.P. 60(b)(2). A motion to set aside a judgment for any reason not enumerated in C.R.C.P. 60(b)(1), (2), (3), or (4) must be made within a reasonable time after the entry of judgment. C.R.C.P. 60(b)(5).

3. Lee first asserted improper service of process when he filed this motion on September 25, 2003, more than two and one-half years after the entry of default judgment. The motion was not filed within the six months required by C.R.C.P. 60(b)(2), nor within the reasonable time required by C.R.C.P. 60(b)(5).
4. In addition, Lee entered a general appearance in this action through counsel when he filed a response on November 19, 2002, to the plaintiffs' motion to transfer property towards satisfaction of judgment. Lee and his counsel participated in subsequent hearings concerning ownership of interests in 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC. Because Lee entered a general appearance and actively participated in this action, he waived any objections to the Court's jurisdiction over him.
5. Also, the default judgment is supported by the affidavit of James Katchen and the affidavit of Les Roberts, the process server. Lee has not presented any countervailing affidavits or other evidence to support his arguments that service of process was defective.
6. Accordingly, Lee's Motion for Dismissal of Complaint is DENIED.
7. Plaintiffs' motion to strike is DENIED.

8. Plaintiffs' motion for sanctions is DENIED.

SO ORDERED.

Dated this 9th day of January, 2004.

BY THE COURT:

/s/

---

J. Mark Hannen  
District Court Judge

---

**APPENDIX 5**

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**COLORADO COURT OF APPEALS**

**No. 04ca2675  
Tr. Ct. No. 02CV0384**

**[Filed December 24, 2004]**

---

Stan J. H. Lee	)
Appellant/Defendant &	)
Counterclaimant	)
	)
v.	)
	)
2050 S. Havana (DTSE) LLC, dba	)
Komart Mall on Havana Heights and	)
Komart Korean & Japanese Supermarket,	)
LLC	)
Appellee/Plaintiff & Counterdefendant	)
	)

---

**DEFENDANT'S NOTICE OF APPEAL AGAINST  
TWO ORDERS OF THE TRIAL COURT DATED 15<sup>TH</sup>  
DEC. 2004 DENYING JURY TRIAL AND  
DISCOVERY**

COMES NOW the Appellant/Defendant & Counterclaimant Mr. Stan J.H. Lee through his Attorney Dr. Kishan K. Khanna Ph.D. and files this Notice of Appeal for relief against two laconic orders without any reasons dated 15<sup>th</sup> Dec.

2004 passed by the Trial Court, copies annexed as EXHIBIT A and EXHIBIT B.

## **1. FACTS IN BRIEF**

1. After withdrawal of the earlier Attorney of Defendant Mr. David M. Fried the undersigned Attorney Dr. Kishan K. Khanna filed his appearance on 3<sup>rd</sup> June 2004 and requested for Jury Trial and further discovery, immediately thereafter on 4<sup>th</sup> June 2004, because grievously dangerous treatment was inflicted on the Defendant and his attorney on 3<sup>rd</sup> June 2004 by the Honorable Judge. These facts have been recorded in the Motions under Rule 97 filed by the Defendant for recusal of the Honorable Judge.

2. In this case and the other case No. 01 CV0222 before another Honorable Judge Mr. Mark J. Hannen - "linked" with this Case at the instance of the Plaintiff's Attorney Mr. Howard J. Beck for fraudulent purposes -- the Defendant's Attorney Mr. Fried colluded with Attorney Mr. Howard J. Beck and Attorney of the Plaintiff in case No. 01 CV 0222 Mr. Richard S. Strauss -- to deny justice to the Defendant.

3. In the present case, amongst several other things, in collusion with Mr. Beck, Mr. Fried obtained orders of the Honorable Court for compulsory, time bound "global settlement" (within 2 weeks) against his own client. In the other case he actively pleaded and impressed upon the Honorable Judge to pass a quick order against Mr. Stan Lee, so that the "global settlement" planned by him in this Case No. 02 CV 0384 could take place.

4. When Defendant Mr. Stan Lee requested Attorney Mr. Fried to withdraw because of his continued acts against the interests of Mr. Stan Lee, Mr. Fried and Mr. Beck retaliated

with a contempt motion by Mr. Beck that the Defendant Mr. Start Lee disobeyed the court order in that he did not personally come down to Colorado from California for "global settlement" scheduled by Mr. Beck on 16<sup>th</sup> March 2004 – even though Mr. Fried continued to be the attorney of Mr. Stan Lee on 16<sup>th</sup> March 2004 and was in Colorado.

5. Thus even though not required to attend the "global settlement" buy any law, Mr. Stan Lee was slapped with contempt and warrants and further vindictive oral orders of the Honorable Judge that Mr. Stan Lee would continue to be in jail after arrest as long as she would not find time to set a bond for him.

6. Thus the life and liberty of an innocent citizen was put at stake in a civil case on the basis of obviously false and fraudulent representations of Mr. Beck only to show the power of Mr. Beck and to teach Mr. Stan Lee a lesson for daring to ask Mr. Fried to withdraw because Mr. Fried had been faithful to the Plaintiff and his attorney Mr. Beck.

7. One could expect such a retaliatory act on the part of Mr. Fried and Mr. Beck, but even Honorable Judge Marilyn Leonard did not care to verify the veracity of the obviously false and concocted allegations of Mr. Beck and convicted Mr. Stan Lee "in absentia" without even a semblance of investigation.

8. In fact Honorable Judge Marilyn Leonard was pleased to treat the attorney of the Defendant Mr. Stan Lee also as another criminal -- who did not deserve any courtesy -- because as Mr. Beck described him -- " he was an Indian - Asian Indian -- and he spoke English as a "second language" like his Korean Clients, and his mother tongue was HINDU, and his Ph.D. was from Bombay ..... "

9. The main reason why Honorable Judge Marilyn Leonard was pleased to work against the canons of Judicial Conduct appears to be that Mr. Beck claimed 33 years of legal practice -- buttressed by the legal practice of 20 years of Attorney Mr. Fried -- and this made him some superhuman with divine rights against lesser mortals like Mr. Stan Lee and "Asian Indian" Dr. Khanna.

10. The unethical, unprofessional and racist conduct of attorneys Mr. Beck and Mr. Fried has been separately reported to the Attorney Regulation Committee and hopefully they shall be disbarred for such atrocious conduct so that better interests of an impartial and fair judicial system and a more responsible legal profession prevail.

11. Rule 97 Motions were filed so that Honorable Judge Marilyn Leonard be pleased to recuse since willingly and knowingly permitted such an atrocious unethical, unprofessional and racist conduct by two attorneys in an open court, and followed up by summarily punishing the Defendant Mr. Stan Lee and his attorney Dr. Kishan K. Khanna.

12. The conduct of Marilyn Leonard is highlighted in the prolonged disparaging tirade of Mr. Beck and Mr. Fried and willing joining in by her in the transcript of the proceedings of Case No. 02 CV 384 on 21<sup>st</sup> Nov. 2003.

13. in much the same way, in Case No. 01 CV 0222, the Honorable Judge Mark J. Hannen was pleased to pass a nullity order -- an order not based on the evidence presented before him by the parties in a formal Hearing conducted by him -- but based on some representations made on the side by Attorneys Mr. Beck and Mr. Strauss - clearly arbitrary and capricious, and against common sense, established norms of

judicial conduct, and the law laid down by the Supreme Court of Colorado.

14. Thus the interests of Defendant Mr. Lee have been so grievously injured by the collusion of his own Attorney Mr. Fried, with the Plaintiff's Attorneys Mr Beck and Mr. Strauss --with a total collective practice of over 80 years proving that they are able to obtain whatever orders they want from the Benches.

15. In his eagerness to complete the case fast for his collusive partner Mr. Beck, Mr. Fried had not demanded jury trial and had not completed full discovery in this Case 02 CV384.

16. As explained above Jury trial has become all the more necessary for the defendant so as to safeguard his interests, because there is no guarantee that the presiding Honorable Judges will not be influenced by Mr. Beck like Honorable Judges Leonard and Hannen.

17. Some assurance against such arbitrary, and capricious findings is the constitutional safeguard of a jury trial and it is considered axiomatic that no fair trial can be conducted without full discovery.

18. However, the Honorable Court has now passed two laconic orders dated 15<sup>th</sup> Dec. 2004 denying Defendant's demand for jury trial and granting Plaintiff's motion for no further discovery.

19. It need not be repeated that Plaintiff's Attorney Mr. Beck has once again demonstrated that he can make any false and fraudulent allegations to influence the Bench by claiming a legal practice of 33 years and the Honorable Judges would not find it necessary to verify the facts thereafter.



20. Stan Lee refers to and relies on the transcript of the proceedings of the court in this case on 21<sup>st</sup> Nov. 2003 as an example of how badly the judicial process is abused by attorneys claiming a lengthy legal practice of 33 years.

21. These laconic orders have been passed by the Honorable Judge against the Defendant much in the same way as per past experience of the Defendant.

22. The Defendant has become acutely aware with personal sad experience of the predisposition of the Honorable Judges to favor an attorney with a "big name" and "small registration number" and therefore requests the Court of Appeals to ensure that justice is done in this and other cases, since the manner in which orders are passed by the Honorable Judges even such serious cases shows that there is something terribly wrong with the system.

## II. GROUNDS FOR APPEAL

23. Jury trial is a constitutional right of the Defendant and ought not to be denied to him just because it will be cumbersome or inconvenient to the Plaintiffs who have retained a "senior" an attorney with 33 years of legal practice.

24. The Defendant has already suffered tremendously financially, physically, and emotionally with arbitrary, and capricious Bench orders and threats of continued jail term -- only because the Defendant dared to request withdrawal of Mr. Fried who was colluding against him with the Plaintiff's Attorney with 33 years of legal practice.

25. That is why Mr. Fried had not demanded jury trial and did not complete full discovery. The Defendant should not



suffer on account of deliberate failures on the part of his former attorney.

26. Several courts have found it necessary to rule that every litigant citizen has a constitutional right, and the State guarantees implicitly and explicitly a fair and impartial judicial system, and this right cannot be abridged or taken away by the deliberate abuse of discretion by an Honorable Judge to favor some members of the legal fraternity.

27. There is no reason why the Plaintiffs should object to and the Honorable Judge should not allow a jury trial against the constitutional provisions – especially when the facts reveal that the Defendant has been so badly prejudiced by at least two Bench judgments.

28. It appears that the Honorable Judges feel obliged to ignore all the instructions of the superior courts, judicial norms, Colorado Rules of Judicial Conduct, and Colorado Rules of Civil Procedure in favor of the Plaintiff's Attorney with a "big name" and a "small Registration Number" to deny even due process to other litigants.

29. These and other cases like Case No.01 CV 5606 before Honorable Judge Robert S. Hyatt, Case No. 02 CV 5947 before Honorable Judge Shelly I. Gilman, followed by Case No. 03 CV 4476, to mention only a few, show that there is a system of express invidious favoritism practiced by Honorable Judges in favor of "senior" members of the legal fraternity -- against constitutional provisions, by violating constitutional guarantees of equality, signifying open, abject, unjustified favoritism in different courts by different judges. This could not be a mere statistical coincidence. In fact each of these cases must be investigated to evolve a constitutional solution for this grave endemic malady.

### III. FINALITY OF THE ORDER

30. The Honorable Judge has passed the orders denying jury trial and discovery, making it certain that the Defendant will not be able to get a free and fair trial and therefore it will be futile to continue expense of time, effort and money with his fate decided in advance.

31. If that is the case, the Defendant would be well advised to agree to pay off the Plaintiffs their claim without raising an issue of his own counterclaim in compliance with the terms and conditions set by the Plaintiff's attorney Mr. Beck for the so called "global settlement", knowing fully well that no justice can be obtained in Bench trials, unless the Defendant hires an attorney with an even "bigger name" and "smaller registration number" which of course he is unable to afford.

32. In this respect therefore the order of the Honorable Judge is final because if the order of the Trial Court prevails, the Defendant would be forced to sign on the dotted line in this case as he has been forced to sign on the dotted line in Case No. 01 CV 0222.

### IV. ISSUES

33. The impropriety of unethical, unprofessional and fraudulent conduct of the Defendant's Attorney in violation of Colorado Rules of Professional Responsibility.

34. Active discrimination and favoritism practiced by Honorable Judges based on some undeclared and illegal considerations.

35. The impropriety of the unethical and unprofessional conduct of the Honorable Judges in clear violation of Cannons of Colorado Rules of Judicial conduct.

36. Violation of laws of the land and denial of natural justice and guaranteed due process by the Court to the defendant and open undermining of the judicial system of the State by active collusion of "senior" lawyers and Honorable Judge.

37. Denial of fair and impartial judicial process as per declared law and as guaranteed by the Constitution of USA and Constitution of Colorado.

38. Palpable and arbitrary abuse of discretion by Honorable Judges with a bent of mind to favor attorneys with a "big name" and "small registration number" without assigning any reason whatsoever to justify their order.

## V. CASE LAW RELIED UPON

39. The Defendant will rely on the following, amongst others, case law

- (I) Holland v. Board of Commissioners 883 P. 2d 500
- (ii) Johnson v. District Court, 647 P. 2d 952
- (iii) Goebel v. Benton 830 P.2d 995
- (iv) Taylor v. Hayes, 418 94 S. Ct. 2697, 41 L. Ed. 2d 897
- (v) Moody v. Corsentino, 843 P. 2d 1335
- (vi) Hammons v. Birket, 759 P. 2d 783
- (vii) Civil Service Commission v. Pinder 812 P. 2d 645
- (viii) Continental Air Lines, Inc. Keena, 731 P 2d 708
- (ix) Kevbank Nat. Assn v. Mascarenas 17 P. 3d 209
- (x) In Memorial Gardens, Inc. v. Olympian Sales & Management Consultants, Inc., 690 P. 2d 207
- (xi) Sunny Acres Villa, Inc., v. Cooper, 25 P. 3d 44
- (xii) Artes- Roy v. Lyman, 833 P. 2d 62

- (xiii) Sa Bell's Inc. v. City of Golden, 832 P. 2d 974
- (xiv) People v. District Court, 560 P. 2d 828
- (xv) Miller v. First National Bank of Englewood, 300 P. 2d 99
- (xvi) Sewell v. Public Service Co. of Colorado, 832 P. 2d 994
- (xvii) Churchy v. Adolph Coors Co., 739 P. 2d 1336
- (xviii) Kaiser Foundation Health Plan v. Sharp., 741 P. 2d 714
- (xix) Hatfield v. Barnes, 168 P. 2d 552
- (xx) Armstrong v. Manzo, 380 US 545
- (xxi) Rules of Department of Labor & Industrial Services ex rel. Hansen v. East Idaho, 111 Idaho 137, 721 P. 2d 736
- (xxii) In Re Marriage of Goellner, 770 P. 2d 1387.

Dated this 22<sup>nd</sup> Dec. 2004

Respectfully submitted

DR. KHANNA ESQ. LLC.